

House Study Bill 212

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
COMMERCE/INSURANCE
DIVISION BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to cemeteries and cemetery regulation, providing
2 administration and enforcement procedures, establishing
3 requirements for interment rights agreements and reporting,
4 establishing and appropriating fees, and providing penalties.
5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
6 TLSB 1108DP 81
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1 1 Section 1. Section 331.325, subsections 2 and 3, Code
1 2 2005, are amended to read as follows:
1 3 2. Each county board of supervisors may adopt an ordinance
1 4 assuming jurisdiction and control of pioneer cemeteries in the
1 5 county. The board shall exercise the powers and duties of
1 6 township trustees relating to the maintenance and repair of
1 7 cemeteries in the county as provided in sections 359.28
1 8 through ~~359.41~~ 359.40 except that the board shall not certify
1 9 a tax levy pursuant to section 359.30 or 359.33 and except
1 10 that the maintenance and repair of all cemeteries under the
1 11 jurisdiction of the county including pioneer cemeteries shall
1 12 be paid from the county general fund. The maintenance and
1 13 improvement program for a pioneer cemetery may include
1 14 restoration and management of native prairie grasses and
1 15 wildflowers.
1 16 3. In lieu of management of the cemeteries, the board of
1 17 supervisors may create, by ordinance, a cemetery commission to
1 18 assume jurisdiction and management of the pioneer cemeteries
1 19 in the county. The ordinance shall delineate the number of
1 20 commissioners, the appointing authority, the term of office,
1 21 officers, employees, organizational matters, rules of
1 22 procedure, compensation and expenses, and other matters deemed
1 23 pertinent by the board. The board may delegate any power and
1 24 duties relating to cemeteries which may otherwise be exercised
1 25 by township trustees pursuant to sections 359.28 through
1 26 ~~359.41~~ 359.40 to the cemetery commission except the commission
1 27 shall not certify a tax levy pursuant to section 359.30 or
1 28 359.33 and except that the expenses of the cemetery commission
1 29 shall be paid from the county general fund.
1 30 Sec. 2. Section 331.502, subsection 34, Code 2005, is
1 31 amended to read as follows:
1 32 34. Serve as a trustee for funds of a cemetery association
1 33 as provided in ~~sections 566.12 and 566.13~~ section 523I.505.
1 34 Sec. 3. Section 523A.203, subsection 6, paragraph b, Code
1 35 2005, is amended to read as follows:
2 1 b. Use any funds required to be held in trust under this
2 2 chapter ~~or chapter 566A~~ to purchase an interest in any
2 3 contract or agreement to which a seller is a party.
2 4 Sec. 4. Section 523A.812, Code 2005, is amended to read as
2 5 follows:
2 6 523A.812 INSURANCE DIVISION REGULATORY FUND.
2 7 The insurance division may authorize the creation of a
2 8 special revenue fund in the state treasury, to be known as the
2 9 insurance division regulatory fund. The commissioner shall
2 10 allocate annually from the fees paid pursuant to section
2 11 523A.204, two dollars for each purchase agreement reported on
2 12 an establishment permit holder's annual report for deposit to
2 13 the regulatory fund. The remainder of the fees collected
2 14 pursuant to section 523A.204 shall be deposited into the
2 15 general fund of the state. The commissioner shall also
2 16 allocate annually the audit fees paid pursuant to section

2 17 523A.814 for deposit to the regulatory fund. The moneys in
2 18 the regulatory fund shall be retained in the fund. The moneys
2 19 are appropriated and, subject to authorization by the
2 20 commissioner, may be used to pay auditors, audit expenses,
2 21 investigative expenses, the expenses of mediation ordered by
2 22 the commissioner, consumer education expenses, the expenses of
2 23 a toll-free telephone line to receive consumer complaints, and
2 24 the expenses of receiverships established under section
2 25 523A.811. An annual allocation to the regulatory fund shall
2 26 not be imposed if the current balance of the fund exceeds two
2 27 hundred thousand dollars.

2 28 Sec. 5. NEW SECTION. 523A.814 AUDIT FEE.

2 29 In addition to the filing fee paid pursuant to section
2 30 523A.204, subsection 5, an establishment filing an annual
2 31 report shall pay an audit fee in the amount of five dollars
2 32 for each purchase agreement subject to a filing fee that is
2 33 sold between July 1, 2005, and December 31, 2007.

2 34 SUBCHAPTER 1

2 35 SHORT TITLE, DEFINITIONS, AND APPLICABILITY

3 1 Sec. 6. NEW SECTION. 523I.101 SHORT TITLE.

3 2 This chapter may be cited as the "Iowa Cemetery Act".

3 3 Sec. 7. NEW SECTION. 523I.102 DEFINITIONS.

3 4 For purposes of this chapter, unless the context otherwise
3 5 requires:

3 6 1. "Authorized to do business within this state" means a
3 7 person licensed, registered, or subject to regulation by an
3 8 agency of the state of Iowa or who has filed a consent to
3 9 service of process with the commissioner for purposes of this
3 10 chapter.

3 11 2. "Burial site" means any area, except a cemetery, that
3 12 is used to inter or scatter remains.

3 13 3. "Capital gains" means appreciation in the value of
3 14 trust assets for which a market value may be determined with
3 15 reasonable certainty after deduction of investment losses,
3 16 taxes, expenses incurred in the sale of trust assets, any
3 17 costs of the operation of the trust, and any annual audit
3 18 fees.

3 19 4. "Care fund" means funds set aside for the care of a
3 20 perpetual care cemetery, including all of the following:

3 21 a. Money or real or personal property impressed with a
3 22 trust by the terms of this chapter.

3 23 b. Contributions in the form of a gift, grant, or bequest.

3 24 c. Any accumulated income that the trustee of the fund or
3 25 the cemetery allocates to principal.

3 26 5. "Casket" means a rigid container which is designed for
3 27 the encasement of human remains and which is usually
3 28 constructed of wood, metal, fiberglass, plastic, or like
3 29 material and ornamented and lined with fabric.

3 30 6. "Cemetery" means any area that is or was open to use by
3 31 the public in general or any segment thereof and is used or is
3 32 intended to be used to inter or scatter remains. "Cemetery"
3 33 does not include the following:

3 34 a. A private burial site where use is restricted to
3 35 members of a family, if the interment rights are conveyed
4 1 without a monetary payment, fee, charge, or other valuable
4 2 form of compensation or consideration.

4 3 b. A private burial site where use is restricted to a
4 4 narrow segment of the public, if the interment rights are
4 5 conveyed without a monetary payment, fee, charge, or other
4 6 valuable form of compensation or consideration.

4 7 c. A pioneer cemetery.

4 8 7. "Columbarium" means a structure, room, or space in a
4 9 mausoleum or other building containing niches or recesses for
4 10 disposition of cremated remains.

4 11 8. "Commissioner" means the commissioner of insurance or
4 12 the deputy administrator authorized in section 523A.801 to the
4 13 extent the commissioner delegates functions to the deputy
4 14 administrator.

4 15 9. "Common business enterprise" means a group of two or
4 16 more business entities that share common ownership in excess
4 17 of fifty percent.

4 18 10. "Disinterment" means to remove human remains from
4 19 their place of final disposition.

4 20 11. "Doing business in this state" means issuing or
4 21 performing wholly or in part any term of an interment rights
4 22 agreement executed within the state of Iowa.

4 23 12. "Financial institution" means a state or federally
4 24 insured bank, savings and loan association, credit union,
4 25 trust department thereof, or a trust company that is
4 26 authorized to do business within this state, that has been
4 27 granted trust powers under the laws of this state or the

4 28 United States, and that holds funds under a trust agreement.
4 29 "Financial institution" does not include a cemetery or any
4 30 person employed by or directly involved with a cemetery.
4 31 13. "Garden" means an area within a cemetery established
4 32 by the cemetery as a subdivision for organizational purposes,
4 33 not for sale purposes.
4 34 14. "Grave space" means a space of ground in a cemetery
4 35 that is used or intended to be used for an in-ground burial.
5 1 15. "Gross selling price" means the aggregate amount a
5 2 purchaser is obligated to pay for interment rights, exclusive
5 3 of finance charges.
5 4 16. "Inactive cemetery" means a cemetery that is not
5 5 operating on a regular basis, is not offering to sell or
5 6 provide interments or other services reasonably necessary for
5 7 interment, and does not provide or permit reasonable ingress
5 8 or egress for the purposes of visiting interment spaces.
5 9 17. "Income" means the return in money or property derived
5 10 from the use of trust principal after deduction of investment
5 11 losses, taxes, and expenses incurred in the sale of trust
5 12 assets, any cost of the operation of the trust, and any annual
5 13 audit fees. "Income" includes but is not limited to:
5 14 a. Rent of real or personal property, including sums
5 15 received for cancellation or renewal of a lease and any
5 16 royalties.
5 17 b. Interest on money lent, including sums received as
5 18 consideration for prepayment of principal.
5 19 c. Cash dividends paid on corporate stock.
5 20 d. Interest paid on deposit funds or debt obligations.
5 21 e. Gain realized from the sale of trust assets.
5 22 18. "Insolvent" means the inability to pay debts as they
5 23 become due in the usual course of business.
5 24 19. "Interment rights" means the rights to place remains
5 25 in a specific location for use as a final resting place or
5 26 memorial.
5 27 20. "Interment rights agreement" means an agreement to
5 28 furnish memorials, memorialization, opening and closing
5 29 services, or interment rights.
5 30 21. "Interment space" means a space used or intended to be
5 31 used for the interment of remains including, but not limited
5 32 to, a grave space, lawn crypt, mausoleum crypt, and niche.
5 33 22. "Lawn crypt" means a preplaced enclosed chamber, which
5 34 is usually constructed of reinforced concrete and poured in
5 35 place, or a precast unit installed in quantity, either side=
6 1 by=side or at multiple depths, and covered by earth or sod.
6 2 23. "Lot" means an area in a cemetery containing more than
6 3 one interment space which is uniquely identified by an
6 4 alphabetical, numeric, or alphanumeric identification
6 5 system.
6 6 24. "Maintenance fund" means funds set aside for the
6 7 maintenance of a nonperpetual care cemetery, including all of
6 8 the following:
6 9 a. Money or real or personal property impressed with a
6 10 trust by the terms of this chapter.
6 11 b. Contributions in the form of a gift, grant or bequest.
6 12 c. Any accumulated income that the trustee of the fund or
6 13 the cemetery allocates to principal.
6 14 25. "Mausoleum" means an aboveground structure designed
6 15 for the entombment of human remains.
6 16 26. "Mausoleum crypt" means a chamber in a mausoleum of
6 17 sufficient size to contain casketed human remains.
6 18 27. "Memorial" means any product, including any foundation
6 19 other than a mausoleum or columbarium, used for identifying an
6 20 interment space or for commemoration of the life, deeds, or
6 21 career of a decedent including, but not limited to, a
6 22 monument, marker, niche plate, urn garden plaque, crypt plate,
6 23 cenotaph, marker bench, and vase.
6 24 28. "Memorial care" means any care provided or to be
6 25 provided for the general maintenance of memorials including
6 26 foundation repair or replacement, resetting or straightening
6 27 tipped memorials, repairing or replacing inadvertently damaged
6 28 memorials and any other care clearly specified in the purchase
6 29 agreement.
6 30 29. "Memorial dealer" means any person offering or selling
6 31 memorials retail to the public.
6 32 30. "Memorialization" means any permanent system designed
6 33 to mark or record the name and other data pertaining to a
6 34 decedent.
6 35 31. "Merchandise" means any personal property offered or
7 1 sold for use in connection with the funeral, final
7 2 disposition, memorialization, or interment of human remains,
7 3 but which is exclusive of interment rights.

7 4 32. "Neglected cemetery" means a cemetery where there has
7 5 been a failure to cut grass or weeds or care for graves,
7 6 memorials or memorialization, walls, fences, driveways, and
7 7 buildings, or for which proper records of interments have not
7 8 been maintained.

7 9 33. "Niche" means a recess or space in a columbarium or
7 10 mausoleum used for placement of cremated human remains.

7 11 34. "Opening and closing services" means one or more
7 12 services necessarily or customarily provided in connection
7 13 with the interment or entombment of human remains or a
7 14 combination thereof.

7 15 35. "Operating a cemetery" means offering to sell or
7 16 selling interment rights, or any service or merchandise
7 17 necessarily or customarily provided for a funeral, or for the
7 18 entombment or cremation of a dead human, or any combination
7 19 thereof, including but not limited to opening and closing
7 20 services, caskets, memorials, vaults, urns, and interment
7 21 receptacles.

7 22 36. "Outer burial container" means any container which is
7 23 designed for placement in the ground around a casket or an urn
7 24 including, but not limited to, containers commonly known as
7 25 burial vaults, urn vaults, grave boxes, grave liners, and lawn
7 26 crypts.

7 27 37. "Perpetual care cemetery" includes all of the
7 28 following:

7 29 a. Any cemetery that was organized or commenced business
7 30 in this state on or after July 1, 1995.

7 31 b. Any cemetery that has established a care fund in
7 32 compliance with section 523I.810.

7 33 c. Any cemetery that represents that it is a perpetual
7 34 care cemetery in its interment rights agreement.

7 35 d. Any cemetery that represents in any other manner that
8 1 the cemetery provides perpetual, permanent, or guaranteed
8 2 care.

8 3 38. "Person" means an individual, firm, corporation,
8 4 partnership, joint venture, limited liability company,
8 5 association, trustee, government or governmental subdivision,
8 6 agency, or other entity, or any combination thereof.

8 7 39. "Pioneer cemetery" means a cemetery where there were
8 8 six or fewer burials in the preceding fifty years.

8 9 40. "Purchaser" means a person who purchases memorials,
8 10 memorialization, opening and closing services, scattering
8 11 services, interment rights, or a combination thereof. A
8 12 purchaser need not be a beneficiary of the interment rights
8 13 agreement.

8 14 41. "Relative" means a great-grandparent, grandparent,
8 15 father, mother, spouse, child, brother, sister, nephew, niece,
8 16 uncle, aunt, first cousin, second cousin, third cousin, or
8 17 grandchild connected to a person by either blood or affinity.

8 18 42. "Religious cemetery" means a cemetery that is owned,
8 19 operated, or controlled by a recognized church or
8 20 denomination, or a cemetery designated as such in the Official
8 21 Catholic Directory on file with the insurance division or in a
8 22 similar publication of a recognized church or denomination, or
8 23 a cemetery that the commissioner determines is operating as a
8 24 religious cemetery upon review of an application by the
8 25 cemetery that includes a description of the cemetery's
8 26 affiliation with a recognized church or denomination, the
8 27 extent to which the affiliate organization is responsible for
8 28 the financial and contractual obligations of the cemetery, or
8 29 the provision of the Internal Revenue Code, if any, that
8 30 exempts the cemetery from the payment of federal income tax.

8 31 43. "Relocation" means the act of taking remains from the
8 32 place of interment or the place where the remains are being
8 33 held to another designated place.

8 34 44. "Remains" means the body of a deceased human or a body
8 35 part, or limb that has been removed from a living human,
9 1 including a body, body part, or limb in any stage of
9 2 decomposition, or cremated remains.

9 3 45. "Scattering services provider" means a person in the
9 4 business of scattering human cremated remains.

9 5 46. "Seller" means a person doing business within this
9 6 state, including a person doing business within this state who
9 7 advertises, sells, promotes, or offers to furnish memorials,
9 8 memorialization, opening and closing services, scattering
9 9 services or interment rights, or a combination thereof,
9 10 whether the transaction is completed or offered in person,
9 11 through the mail, over the telephone, by the internet, or
9 12 through any other means of commerce.

9 13 47. "Special care" means any care provided or to be
9 14 provided that supplements or exceeds the requirements of this

9 15 chapter in accordance with the specific directions of any
9 16 donor of funds for such purposes.
9 17 48. "Undeveloped space" means a designated area or
9 18 building within a cemetery that has been mapped and planned
9 19 for future development but is not yet fully developed.
9 20 Sec. 8. NEW SECTION. 523I.103 APPLICABILITY OF CHAPTER.
9 21 1. This chapter applies to all of the following:
9 22 a. All cemeteries, except religious cemeteries that
9 23 commenced business prior to July 1, 2005.
9 24 b. All persons advertising or offering memorials,
9 25 memorialization, opening and closing services, scattering
9 26 services at a cemetery, interment rights, or a combination
9 27 thereof for sale.
9 28 c. Interments made in areas not dedicated as a cemetery,
9 29 by a person other than the state archaeologist.
9 30 2. This chapter applies when a purchase agreement is
9 31 executed within this state or an advertisement, promotion, or
9 32 offer to furnish memorials, memorialization, opening and
9 33 closing services, scattering services, interment rights, or a
9 34 combination thereof is made or accepted within this state. An
9 35 offer to furnish memorials, memorialization, opening and
10 1 closing services, scattering services, interment rights, or a
10 2 combination thereof is made within this state, whether or not
10 3 either party is then present in this state, when the offer
10 4 originates from this state or is directed by the offeror to
10 5 this state and received by the offeree in this state through
10 6 the mail, over the telephone, by the internet, or through any
10 7 other means of commerce.
10 8 3. If a foreign person does not have a registered agent or
10 9 agents in the state of Iowa, doing business within this state
10 10 shall constitute the person's appointment of the secretary of
10 11 state of the state of Iowa to be its true and lawful attorney
10 12 upon whom may be served all lawful process of original notice
10 13 in actions or proceedings arising or growing out of any
10 14 contract or tort.

10 15 SUBCHAPTER 2

10 16 ADMINISTRATION AND ENFORCEMENT

10 17 Sec. 9. NEW SECTION. 523I.201 ADMINISTRATION.
10 18 1. This chapter shall be administered by the commissioner.
10 19 The deputy administrator appointed pursuant to section
10 20 523A.801 shall be the principal operations officer responsible
10 21 to the commissioner for the routine administration of this
10 22 chapter and management of the administrative staff. In the
10 23 absence of the commissioner, whether because of vacancy in the
10 24 office due to absence, physical disability, or other cause,
10 25 the deputy administrator shall, for the time being, have and
10 26 exercise the authority conferred upon the commissioner. The
10 27 commissioner may by order from time to time delegate to the
10 28 deputy administrator any or all of the functions assigned to
10 29 the commissioner in this chapter. The deputy administrator
10 30 shall employ officers, attorneys, accountants, and other
10 31 employees as needed for administering this chapter.

10 32 2. It is unlawful for the commissioner or any
10 33 administrative staff to use for personal benefit any
10 34 information which is filed with or obtained by the
10 35 commissioner and which is not made public. This chapter does
11 1 not authorize the commissioner or any staff member to disclose
11 2 any such information except among themselves or to other
11 3 cemetery and funeral administrators, regulatory authorities,
11 4 or governmental agencies, or when necessary and appropriate in
11 5 a proceeding or investigation under this chapter or as
11 6 required by chapter 22. This chapter neither creates nor
11 7 derogates any privileges that exist at common law or otherwise
11 8 when documentary or other evidence is sought under a subpoena
11 9 directed to the commissioner or any administrative staff.

11 10 Sec. 10. NEW SECTION. 523I.202 INVESTIGATIONS AND
11 11 SUBPOENAS.

11 12 1. The commissioner may, for the purpose of discovering a
11 13 violation of this chapter, or implementing rules or orders
11 14 issued under this chapter do any of the following:

11 15 a. Make such public or private investigations within or
11 16 outside of this state as the commissioner deems necessary to
11 17 determine whether any person has violated or is about to
11 18 violate this chapter, or implementing rules or orders issued
11 19 under this chapter, or to aid in the enforcement of this
11 20 chapter, or in the prescribing of rules and forms under this
11 21 chapter.

11 22 b. Require or permit any person to file a statement in
11 23 writing, under oath or otherwise as the commissioner or
11 24 attorney general determines, as to all the facts and
11 25 circumstances concerning the matter being investigated.

11 26 c. Notwithstanding chapter 22, keep confidential the
11 27 information obtained in the course of an investigation.
11 28 However, if the commissioner determines that it is necessary
11 29 or appropriate in the public interest or for the protection of
11 30 the public, the commissioner may share information with other
11 31 administrators, regulatory authorities, or governmental
11 32 agencies, or may publish information concerning a violation of
11 33 this chapter, or implementing rules or orders issued under
11 34 this chapter.

11 35 d. Investigate a cemetery and examine the books, accounts,
12 1 papers, correspondence, memoranda, purchase agreements, files,
12 2 or other documents or records of the cemetery.

12 3 e. Administer oaths and affirmations, subpoena witnesses,
12 4 compel their attendance, take evidence, and require the
12 5 production of any books, accounts, papers, correspondence,
12 6 memoranda, purchase agreements, files, or other documents or
12 7 records which the commissioner deems relevant or material to
12 8 any investigation or proceeding under this chapter and
12 9 implement rules, all of which may be enforced under chapter
12 10 17A.

12 11 f. Apply to the district court for an order requiring a
12 12 person's appearance before the commissioner or attorney
12 13 general, or a designee of either or both, in cases where the
12 14 person has refused to obey a subpoena issued by the
12 15 commissioner or attorney general. The person may also be
12 16 required to produce documentary evidence germane to the
12 17 subject of the investigation. Failure to obey a court order
12 18 under this subsection constitutes contempt of court.

12 19 2. The commissioner may issue and bring an action in
12 20 district court to enforce subpoenas within this state at the
12 21 request of an agency or administrator of another state, if the
12 22 activity constituting an alleged violation for which the
12 23 information is sought would be a violation of this chapter had
12 24 the activity occurred in this state.

12 25 Sec. 11. NEW SECTION. 523I.203 CEASE AND DESIST ORDERS
12 26 == INJUNCTIONS.

12 27 If it appears to the commissioner that a person has engaged
12 28 or is about to engage in an act or practice constituting a
12 29 violation of this chapter, or implementing rules or orders
12 30 issued under this chapter, the commissioner or the attorney
12 31 general may do any of the following:

12 32 1. Issue a summary order directed to the person that
12 33 requires the person to cease and desist from engaging in such
12 34 an act or practice. A person may request a hearing within
12 35 thirty days of issuance of the summary order. If a hearing is
13 1 not timely requested, the summary order shall become final by
13 2 operation of law. The order shall remain effective from the
13 3 date of issuance until the date the order becomes final by
13 4 operation of law or is overturned by a presiding officer
13 5 following a request for hearing. Section 17A.18A is
13 6 inapplicable to summary cease and desist orders issued under
13 7 this section.

13 8 2. Bring an action in the district court in any county of
13 9 the state for an injunction to restrain a person subject to
13 10 this chapter and any agents, employees, or associates of the
13 11 person from engaging in conduct or practices deemed contrary
13 12 to the public interest. In any proceeding for an injunction,
13 13 the commissioner or attorney general may apply to the court
13 14 for a subpoena to require the appearance of a defendant and
13 15 the defendant's agents, employees, or associates and for the
13 16 production of any books, accounts, papers, correspondence,
13 17 memoranda, purchase agreements, files, or other documents or
13 18 records germane to the hearing upon the petition for an
13 19 injunction. Upon a proper showing, a permanent or temporary
13 20 injunction, restraining order, or writ of mandamus shall be
13 21 granted and a receiver may be appointed for the defendant or
13 22 the defendant's assets. The commissioner or attorney general
13 23 shall not be required to post a bond.

13 24 Sec. 12. NEW SECTION. 523I.204 COURT ACTION FOR FAILURE
13 25 TO COOPERATE.

13 26 1. If a person fails or refuses to file a statement or
13 27 report or to produce any books, accounts, papers,
13 28 correspondence, memoranda, purchase agreements, files, or
13 29 other documents or records, or to obey a subpoena issued by
13 30 the commissioner, the commissioner may refer the matter to the
13 31 attorney general, who may apply to a district court to enforce
13 32 compliance. The court may order any or all of the following:

13 33 a. Injunctive relief restricting or prohibiting the offer
13 34 or sale of memorials, memorialization, opening and closing
13 35 services, scattering services, interment rights, or a
14 1 combination thereof.

14 2 b. Production of documents or records including but not
14 3 limited to books, accounts, papers, correspondence, memoranda,
14 4 purchase agreements, files, or other documents or records.
14 5 c. Such other relief as may be required.
14 6 2. A court order issued pursuant to subsection 1 is
14 7 effective until the person files the statement or report or
14 8 produces the documents requested, or obeys the subpoena.

14 9 Sec. 13. NEW SECTION. 523I.205 PROSECUTION FOR
14 10 VIOLATIONS OF LAW == CIVIL PENALTIES.

14 11 1. A violation of this chapter or rules adopted or orders
14 12 issued under this chapter is a violation of section 714.16,
14 13 subsection 2, paragraph "a". The remedies and penalties
14 14 provided by section 714.16, including but not limited to
14 15 injunctive relief and penalties, apply to violations of this
14 16 chapter.

14 17 2. If the commissioner believes that grounds exist for the
14 18 criminal prosecution of persons subject to this chapter for
14 19 violations of this chapter or any other law of this state, the
14 20 commissioner may forward to the attorney general or the county
14 21 attorney the grounds for the belief, including all evidence in
14 22 the commissioner's possession, so that the attorney general or
14 23 the county attorney may proceed with the matter as deemed
14 24 appropriate. At the request of the attorney general, the
14 25 county attorney shall appear and prosecute the action when
14 26 brought in the county attorney's county.

14 27 3. A person who violates a provision of this chapter or
14 28 rules adopted or orders issued under this chapter may be
14 29 subject to civil penalties in addition to criminal penalties.
14 30 The commissioner may impose, assess, and collect a civil
14 31 penalty not exceeding ten thousand dollars for each violation.
14 32 For the purposes of computing the amount of each civil
14 33 penalty, each day of a continuing violation constitutes a
14 34 separate violation. All civil penalties collected pursuant to
14 35 this section shall be deposited in the general fund of the
15 1 state.

15 2 Sec. 14. NEW SECTION. 523I.206 COOPERATION WITH OTHER
15 3 AGENCIES.

15 4 1. The commissioner may cooperate with any governmental
15 5 law enforcement or regulatory agency to encourage uniform
15 6 interpretation and administration of this chapter and
15 7 effective enforcement of this chapter and effective regulation
15 8 of the sale of memorials, memorialization, and cemeteries.

15 9 2. Cooperation with other agencies may include but is not
15 10 limited to:

15 11 a. Making a joint examination or investigation.
15 12 b. Holding a joint administrative hearing.
15 13 c. Filing and prosecuting a joint civil or administrative
15 14 proceeding.
15 15 d. Sharing and exchanging personnel.
15 16 e. Sharing and exchanging relevant information and
15 17 documents.

15 18 f. Formulating, in accordance with chapter 17A, rules or
15 19 proposed rules on matters such as statements of policy,
15 20 regulatory standards, guidelines, and interpretive opinions.

15 21 Sec. 15. NEW SECTION. 523I.207 RULES, FORMS, AND ORDERS.

15 22 1. Under chapter 17A, the commissioner may from time to
15 23 time make, amend, and rescind such rules, forms, and orders as
15 24 are necessary or appropriate for the protection of purchasers
15 25 and the public and to administer the provisions of this
15 26 chapter, its implementing rules, and orders issued under this
15 27 chapter.

15 28 2. A rule, form, or order shall not be made, amended, or
15 29 rescinded unless the commissioner finds that the action is
15 30 necessary or appropriate to protect purchasers and the public
15 31 and is consistent with the policies and provisions of this
15 32 chapter, its implementing rules, and orders issued under this
15 33 chapter.

15 34 3. A provision of this chapter imposing any liability does
15 35 not apply to an act done or omitted in good faith in
16 1 conformity with any rule, form, or order of the commissioner.

16 2 Sec. 16. NEW SECTION. 523I.208 DATE OF FILING ==
16 3 INTERPRETIVE OPINIONS.

16 4 1. A document is filed when it is received by the
16 5 commissioner.

16 6 2. Requests for interpretive opinions may be granted in
16 7 the commissioner's discretion.

16 8 Sec. 17. NEW SECTION. 523I.209 MISLEADING FILINGS.

16 9 It is unlawful for a person to make or cause to be made, in
16 10 any document filed with the commissioner, or in any proceeding
16 11 under this chapter, any statement of material fact which is,
16 12 at the time and in the light of the circumstances under which

16 13 it is made, false or misleading, or, in connection with such
16 14 statement, to omit to state a material fact necessary in order
16 15 to make the statements made, in the light of the circumstances
16 16 under which they are made, not misleading.

16 17 Sec. 18. NEW SECTION. 523I.210 MISREPRESENTATIONS OF
16 18 GOVERNMENT APPROVAL.

16 19 It is unlawful for a seller under this chapter to represent
16 20 or imply in any manner that the seller has been sponsored,
16 21 recommended, or approved, or that the seller's abilities or
16 22 qualifications have in any respect been passed upon by the
16 23 commissioner.

16 24 Sec. 19. NEW SECTION. 523I.211 FRAUDULENT PRACTICES.

16 25 A person who commits any of the following acts commits a
16 26 fraudulent practice which is punishable as provided in chapter
16 27 714:

16 28 1. Knowingly fails to comply with any requirement of this
16 29 chapter.

16 30 2. Knowingly makes, causes to be made, or subscribes to a
16 31 false statement or representation in a report or other
16 32 document required under this chapter, or implementing rules or
16 33 orders, or renders such a report or document misleading
16 34 through the deliberate omission of information properly
16 35 belonging in the report or document.

17 1 3. Conspires to defraud in connection with the sale of
17 2 memorials, memorialization, opening and closing services,
17 3 scattering services, interment rights, or a combination
17 4 thereof under this chapter.

17 5 4. Fails to deposit funds under this chapter or withdraws
17 6 funds in a manner inconsistent with this chapter.

17 7 5. Knowingly sells memorials, memorialization, opening and
17 8 closing services, scattering services, interment rights, or a
17 9 combination thereof without the permits required under this
17 10 chapter.

17 11 6. Deliberately misrepresents or omits a material fact
17 12 relative to the sale of memorials, memorialization, opening
17 13 and closing services, scattering services, interment rights,
17 14 or a combination thereof.

17 15 Sec. 20. NEW SECTION. 523I.212 RECEIVERSHIPS.

17 16 1. The commissioner shall notify the attorney general of
17 17 the potential need for establishment of a receivership if the
17 18 commissioner finds that a cemetery subject to this chapter
17 19 meets one or more of the following conditions:

17 20 a. Is insolvent.

17 21 b. Has utilized trust funds for personal or business
17 22 purposes in a manner inconsistent with this chapter.

17 23 c. The amount held in trust in a maintenance fund or care
17 24 fund is less than the amount required by this chapter.

17 25 2. The commissioner or attorney general may apply to the
17 26 district court in any county of the state for the
17 27 establishment of a receivership. Upon proof that any of the
17 28 conditions described in this section have occurred, the court
17 29 may grant a receivership.

17 30 Sec. 21. NEW SECTION. 523I.213 INSURANCE DIVISION'S
17 31 ENFORCEMENT FUND.

17 32 A special revenue fund in the state treasury, to be known
17 33 as the insurance division's enforcement fund, is created under
17 34 the authority of the commissioner. The commissioner shall
17 35 allocate annually from the audit fees paid pursuant to section
18 1 523I.808, an amount not exceeding fifty thousand dollars, for
18 2 deposit to the insurance division's enforcement fund. The
18 3 moneys in the enforcement fund shall be retained in the fund.
18 4 The moneys are appropriated and, subject to authorization by
18 5 the commissioner, shall be used to pay auditors, audit
18 6 expenses, investigative expenses, the expenses of consumer
18 7 education, compliance, and education programs for filers and
18 8 other regulated persons, and educational or compliance program
18 9 materials, the expenses of a toll-free telephone line for
18 10 consumer complaints, and the expenses of receiverships of
18 11 perpetual care cemeteries established under section 523I.212.

18 12 Sec. 22. NEW SECTION. 523I.214 VIOLATIONS OF LAW ==
18 13 REFERRALS TO THE DEPARTMENT OF PUBLIC HEALTH.

18 14 If the commissioner discovers a violation of a provision of
18 15 this chapter or any other state law or rule concerning the
18 16 disposal or transportation of human remains, the commissioner
18 17 shall forward all evidence in the possession of the
18 18 commissioner concerning such a violation to the department of
18 19 public health for such proceedings as the department of public
18 20 health deems appropriate.

18 21 SUBCHAPTER 3

18 22 CEMETERY MANAGEMENT

18 23 Sec. 23. NEW SECTION. 523I.301 DISCLOSURE REQUIREMENTS

18 24 == PRICES AND FEES.

18 25 1. A cemetery shall disclose, prior to the sale of
18 26 interment rights, whether opening and closing of the interment
18 27 space is included in the purchase of the interment rights. If
18 28 opening and closing services are not included in the sale and
18 29 the cemetery offers opening and closing services, the cemetery
18 30 must disclose that the price for this service is subject to
18 31 change and disclose the current prices for opening and closing
18 32 services provided by the cemetery.

18 33 2. The cemetery shall fully disclose all fees required for
18 34 interment, entombment, or inurnment of human remains.

18 35 3. A person owning interment rights may sell those rights
19 1 to third parties. The cemetery shall fully disclose, in the
19 2 cemetery's rules, any requirements necessary to transfer title
19 3 of interment rights to a third party.

19 4 Sec. 24. NEW SECTION. 523I.302 INSTALLATION OF OUTER
19 5 BURIAL CONTAINERS.

19 6 A cemetery shall provide services necessary for the
19 7 installation of outer burial containers or other similar
19 8 merchandise sold by the cemetery. This section shall not
19 9 require the cemetery to provide for opening and closing of
19 10 interment or entombment space, unless an agreement executed by
19 11 the cemetery expressly provides otherwise.

19 12 Sec. 25. NEW SECTION. 523I.303 ACCESS BY FUNERAL
19 13 DIRECTORS.

19 14 A cemetery shall not deny access to a licensed funeral
19 15 director who is conducting funeral services or supervising the
19 16 interment or disinterment of human remains.

19 17 Sec. 26. NEW SECTION. 523I.304 RULEMAKING AND
19 18 ENFORCEMENT.

19 19 1. A cemetery may adopt, amend, and enforce rules for the
19 20 use, care, control, management, restriction, and protection of
19 21 the cemetery, as necessary for the proper conduct of the
19 22 business of the cemetery, including, but not limited to, the
19 23 use, care, and transfer of any interment space or right of
19 24 interment.

19 25 2. A cemetery may restrict and limit the use of all
19 26 property within the cemetery by rules that do, but are not
19 27 limited to doing, all of the following:

19 28 a. Prohibit the placement of memorials or memorialization,
19 29 buildings, or other types of structures within any portion of
19 30 the cemetery.

19 31 b. Regulate the uniformity, class, and kind of memorials
19 32 and memorialization and structures within the cemetery.

19 33 c. Regulate the scattering or placement of cremated
19 34 remains within the cemetery.

19 35 d. Prohibit or regulate the placement of nonhuman remains
20 1 within the cemetery.

20 2 e. Prohibit or regulate the introduction or care of trees,
20 3 shrubs, and other types of plants within the cemetery.

20 4 f. Regulate the right of third parties to open, prepare
20 5 for interment, and close interment spaces.

20 6 g. Prohibit interment in any part of the cemetery not
20 7 designated as an interment space.

20 8 h. Prevent the use of space for any purpose inconsistent
20 9 with the use of the property as a cemetery.

20 10 3. A cemetery shall not adopt or enforce a rule that
20 11 prohibits interment because of the race, color, or national
20 12 origin of a decedent. A provision of a contract or a
20 13 certificate of ownership or other instrument conveying
20 14 interment rights that prohibits interment in a cemetery
20 15 because of the race, color, or national origin of a decedent
20 16 is void.

20 17 4. A cemetery's rules shall be plainly printed or
20 18 typewritten and maintained for inspection in the office of the
20 19 cemetery or, if the cemetery does not have an office, in
20 20 another suitable place within the cemetery. The cemetery's
20 21 rules shall be provided to owners of interment spaces upon
20 22 request.

20 23 5. A cemetery's rules shall specify the cemetery's
20 24 obligations in the event that interment spaces, memorials, or
20 25 memorialization are damaged or defaced by acts of vandalism.
20 26 The rules may specify a multiyear restoration of an interment
20 27 space, or a memorial or memorialization when the damage is
20 28 extensive or when money available from the cemetery's trust
20 29 fund is inadequate to complete repairs immediately. The owner
20 30 of an interment space, or a memorial or memorialization that
20 31 has been damaged or defaced shall be notified by the cemetery
20 32 by restricted certified mail at the owner's last known address
20 33 within sixty days of the discovery of the damage or
20 34 defacement. The rules shall specify whether the owner is

20 35 liable, in whole or in part, for the cost to repair or replace
21 1 an interment space or a damaged or defaced memorial or
21 2 memorialization.

21 3 6. The cemetery shall not approve any rule which
21 4 unreasonably restricts competition, or which unreasonably
21 5 increases the cost to the owner of interment rights in
21 6 exercising these rights.

21 7 Sec. 27. NEW SECTION. 523I.305 MEMORIALS AND
21 8 MEMORIALIZATION.

21 9 1. AUTHORIZATION. A cemetery is entitled to determine
21 10 whether a person requesting installation of a memorial is
21 11 authorized to do so, to the extent that this can be determined
21 12 from the records of the cemetery, as is consistent with the
21 13 cemetery's rules. The owner of an interment space or the
21 14 owner's agent may authorize a memorial dealer or independent
21 15 third party to perform all necessary work related to
21 16 preparation and installation of a memorial.

21 17 2. CONFORMITY WITH CEMETERY RULES. A person selling a
21 18 memorial shall review the rules of the cemetery where the
21 19 memorial is to be installed to ensure that the memorial will
21 20 comply with those rules prior to ordering or manufacturing the
21 21 memorial.

21 22 3. SPECIFICATIONS. Upon request, a cemetery shall provide
21 23 reasonable written specifications and instructions governing
21 24 installation of memorials, which shall apply to all
21 25 installations whether performed by the cemetery or another
21 26 person. The written specifications shall include provisions
21 27 governing hours of installation or any other relevant
21 28 administrative requirements of the cemetery. A copy of these
21 29 specifications and instructions shall be provided upon
21 30 request, without charge, to the owner of the interment space,
21 31 next of kin, or a personal representative or agent of the
21 32 owner, including the person installing the memorial. The
21 33 person installing the memorial shall comply with the
21 34 cemetery's written installation specifications and
21 35 instructions. A cemetery shall not adopt or enforce any rule
22 1 prohibiting the installation of a memorial by a memorial
22 2 dealer or independent third party, unless the rule is adopted
22 3 and enforced uniformly for all memorials installed in the
22 4 cemetery.

22 5 4. WRITTEN NOTICE. A memorial dealer or independent third
22 6 party shall provide the cemetery with at least seven business
22 7 days' prior written notice of intent to install a memorial at
22 8 the cemetery, or such lesser notice as the cemetery deems
22 9 acceptable. The notice shall contain the full name, address,
22 10 and relationship of the memorial's purchaser to the person
22 11 interred in the interment space or the owner of the interment
22 12 space, if different. The notice shall also contain the color,
22 13 type, and size of the memorial, the material, the inscription,
22 14 and the full name and interment date of the person interred in
22 15 the interment space.

22 16 5. PREPARATION AND INSTALLATION.

22 17 a. A person installing a memorial shall be responsible to
22 18 the cemetery for any damage caused to the cemetery grounds,
22 19 including roadways, other than normal use during installation
22 20 of the memorial.

22 21 b. Installation work shall cease during any nearby funeral
22 22 procession or committal service.

22 23 c. Installation work shall be done during the cemetery's
22 24 normal weekday hours or at such other times as may be arranged
22 25 with the cemetery.

22 26 d. A memorial must comply with the cemetery's rules. In
22 27 the event of noncompliance, the person installing a memorial
22 28 is responsible for removal of the memorial and shall pay any
22 29 reasonable expenses incurred by the cemetery in connection
22 30 with the memorial's removal.

22 31 e. The cemetery shall, without charge, provide information
22 32 as described on the cemetery's map or plat necessary to locate
22 33 the place where a memorial is to be installed and any other
22 34 essential information the person installing the memorial needs
22 35 to locate the proper interment space.

23 1 f. A person installing a memorial shall follow the
23 2 cemetery's instructions regarding the positioning of the
23 3 memorial.

23 4 g. During the excavation, all sod and dirt shall be
23 5 carefully removed with no sod or dirt left on the interment
23 6 space except the amount needed to fill the space between the
23 7 memorial and the adjacent lawn.

23 8 h. A person installing a memorial shall carefully fill in
23 9 any areas around the memorial with topsoil or sand, in
23 10 accordance with the cemetery's written instructions.

23 11 i. A person installing a memorial shall remove all
23 12 equipment and any debris which has accumulated during
23 13 installation of the memorial.
23 14 j. A person installing a memorial shall check to see if
23 15 any adjacent memorials have become soiled or dirty during
23 16 installation of the memorial and, if so, clean the adjacent
23 17 memorials.
23 18 k. If the person who is installing a memorial damages any
23 19 cemetery property, the person shall notify the cemetery
23 20 immediately. The person installing the memorial shall then
23 21 repair the damage as soon as possible, upon approval by the
23 22 cemetery. The cemetery may require a person installing a
23 23 memorial to provide current proof of workers' compensation
23 24 insurance as required by state law and current proof of
23 25 liability insurance, sufficient to indemnify the cemetery
23 26 against claims resulting from installation of the memorial.
23 27 Proof of liability insurance in an amount of one million
23 28 dollars or more shall preclude the cemetery from requiring a
23 29 person installing a memorial to obtain a performance bond.
23 30 l. If a cemetery has an office, a person installing a
23 31 memorial shall immediately leave notice at the cemetery office
23 32 when the memorial has been installed and all work related to
23 33 the installation is complete.

23 34 6. INSPECTION. A cemetery may inspect the installation
23 35 site of a memorial at any time. If the cemetery determines
24 1 that cemetery rules are not being followed during the
24 2 installation, the cemetery may order the installation to stop
24 3 until the infraction is corrected. The cemetery shall provide
24 4 written notice to the installer as soon as possible if the
24 5 cemetery believes that any of the following have occurred:

24 6 a. The memorial has not been installed correctly.
24 7 b. The person installing the memorial has damaged property
24 8 at the cemetery.
24 9 c. Other cemetery requirements for installation have not
24 10 been met, such as removal of debris or equipment.

24 11 7. LOCATION AND SERVICE CHARGE. A cemetery may charge a
24 12 reasonable service charge for allowing the installation of a
24 13 memorial purchased or obtained from and installed by a person
24 14 other than the cemetery or its agents. This service charge
24 15 shall be based on the cemetery's actual labor costs, including
24 16 fringe benefits, of those employees whose normal duty is to
24 17 inspect the installation of memorials, in accordance with
24 18 generally accepted accounting practices. General
24 19 administrative and overhead costs and any other functions not
24 20 related to actual inspection time shall be excluded from the
24 21 service charge.

24 22 8. FAULTY INSTALLATION. If a memorial sinks, tilts, or
24 23 becomes misaligned within twelve months of its installation
24 24 and the cemetery believes the cause is faulty installation,
24 25 the cemetery shall notify the person who installed the
24 26 memorial in writing and the person who installed the memorial
24 27 shall be responsible to correct the damage, unless the damage
24 28 is caused by inadequate written specifications and
24 29 instructions from the cemetery or acts of the cemetery and its
24 30 agents or employees, including but not limited to running a
24 31 backhoe over the memorial, carrying a vault or other heavy
24 32 equipment over the memorial, or opening or closing an
24 33 interment space adjacent to the memorial.

24 34 9. PERPETUAL CARE. A cemetery may require contributions
24 35 from the purchaser of a memorial for perpetual care, if a
25 1 perpetual care fund deposit is uniformly charged on every
25 2 memorial installed in the cemetery.

25 3 Sec. 28. NEW SECTION. 523I.306 COMMISSION OR BONUS
25 4 UNLAWFUL.

25 5 It shall be unlawful for any organization subject to the
25 6 provisions of this chapter to pay or offer to pay to, or for
25 7 any person, firm, or corporation to receive directly or
25 8 indirectly a commission or bonus or rebate or other thing of
25 9 value, for or in connection with the sale of any interment
25 10 space, lot, or part thereof, in any cemetery. The provisions
25 11 of this section shall not apply to a person regularly employed
25 12 and supervised by such organization or to a person, firm,
25 13 corporation, or other entity licensed under chapter 523A that
25 14 contracts with the cemetery to sell interment spaces or lots.
25 15 The conduct of any person, firm, corporation, or other entity
25 16 described in this section is the direct responsibility of the
25 17 cemetery.

25 18 Sec. 29. NEW SECTION. 523I.307 DISCRIMINATION
25 19 PROHIBITED.

25 20 It shall be unlawful for any organization subject to the
25 21 provisions of this chapter to deny the privilege of interment

25 22 of the remains of any deceased person in any cemetery solely
25 23 because of the race, color, or national origin of such
25 24 deceased person. Any contract, agreement, deed, covenant,
25 25 restriction, or charter provision at any time entered into, or
25 26 bylaw, rule, or regulation adopted or put in force, either
25 27 subsequent or prior to July 4, 1953, authorizing, permitting,
25 28 or requiring any organization subject to the provisions of
25 29 this chapter to deny such privilege of interment because of
25 30 race, color, or national origin of such deceased person is
25 31 hereby declared to be null and void and in conflict with the
25 32 public policy of this state. An organization subject to the
25 33 provisions of this chapter or any director, officer, agent,
25 34 employee, or trustee thereof, shall not be liable for damages
25 35 or other relief, or be subjected to any action in any court of
26 1 competent jurisdiction for refusing to commit any act unlawful
26 2 under this chapter.

26 3 Sec. 30. NEW SECTION. 523I.308 SPECULATION PROHIBITED.

26 4 A cemetery or any person representing a cemetery in a sales
26 5 capacity shall not advertise or represent, in connection with
26 6 the sale or attempted sale of any interment space, that the
26 7 same is or will be a desirable speculative investment for
26 8 resale purposes.

26 9 Sec. 31. NEW SECTION. 523I.309 INTERMENT, RELOCATION, OR
26 10 DISINTERMENT OF REMAINS.

26 11 1. Unless a decedent has left directions in writing for
26 12 the disposition of the decedent's remains as provided in
26 13 subsection 2, the following persons, in the priority listed,
26 14 shall have the right to control the interment, relocation, or
26 15 disinterment of the decedent's remains within or from a
26 16 cemetery:

26 17 a. The person designated in and adequately identified by a
26 18 written instrument signed by the decedent.

26 19 b. The surviving spouse of the decedent, if not legally
26 20 separated from the decedent.

26 21 c. A majority of the surviving adult children of the
26 22 decedent whose whereabouts are reasonably ascertainable.

26 23 d. The surviving parents or legal guardians of the
26 24 decedent whose whereabouts are reasonably ascertainable.

26 25 e. A majority of the surviving adult siblings of the
26 26 decedent whose whereabouts are reasonably ascertainable.

26 27 f. Any adult person in the next degree of kinship in the
26 28 order named by law to inherit the estate of the decedent under
26 29 the rules of inheritance for intestate succession.

26 30 2. The written instrument referred to in subsection 1,
26 31 paragraph "a", shall be in substantially the following form:

26 32 DIRECTIONS FOR DISPOSITION OF MY REMAINS

26 33 Name of person whose remains are to be disposed of as
26 34 directed (decedent):

26 35 Address:

27 1 Telephone Number:

27 2 Acceptance of Appointment: (signature of agent)

27 3 Date of Signature:

27 4 SUCCESSORS

27 5 If my agent dies, becomes legally disabled, resigns, or
27 6 refuses to act, I hereby appoint the following persons (each
27 7 to act alone and successively, in the order named) to serve as
27 8 my agent (attorney-in-fact) to control the disposition of my
27 9 remains as authorized by this document:

27 10 First Successor

27 11 Name:

27 12 Address:

27 13 Telephone Number:

27 14 Acceptance of Appointment: (signature of first successor)

27 15 Date of Signature:

27 16 Second Successor

27 17 Name:

27 18 Address:

27 19 Telephone Number:

27 20 Acceptance of Appointment: (signature of second successor)

27 21 Date of Signature:

27 22 DURATION

27 23 This appointment becomes effective upon my death.

27 24 PRIOR APPOINTMENTS REVOKED

27 25 I hereby revoke any prior appointment of any person to
27 26 control the disposition of my remains.

27 27 RELIANCE

27 28 I hereby agree that any cemetery that receives a copy of
27 29 this document may act under it. Any modification or
27 30 revocation of this document is not effective as to any such
27 31 party until that party receives actual notice of the
27 32 modification or revocation. No such party shall be liable

27 33 because of reliance on a copy of this document.

27 34 ASSUMPTION

27 35 THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS
28 1 APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND
28 2 BY THE PROVISIONS OF, SECTION 523I.309 OF THE CODE OF IOWA.
28 3 Signed this _____ day of _____, _____.

28 4 3. A written instrument referred to in subsection 1,
28 5 paragraph "a", is legally sufficient if the wording of the
28 6 instrument complies substantially with subsection 2, the
28 7 instrument is properly completed, the instrument is signed by
28 8 the decedent, the agent, and each successor agent, and the
28 9 signature of the decedent is acknowledged. Such written
28 10 instrument may be modified or revoked only by a subsequent
28 11 written instrument that complies with the requirements of this
28 12 subsection.

28 13 4. A person who represents that the person knows the
28 14 identity of a decedent and, in order to procure the interment,
28 15 relocation, or disinterment of the decedent's remains, signs
28 16 an order or statement, other than a death certificate, that
28 17 warrants the identity of the decedent is liable for all
28 18 damages that result, directly or indirectly, from that
28 19 representation.

28 20 5. A person may provide written directions for the
28 21 interment, relocation, or disinterment of the person's own
28 22 remains in a will, prepaid funeral or cemetery contract, or
28 23 written instrument signed and acknowledged by the person. The
28 24 directions may govern the inscription to be placed on a grave
28 25 marker attached to any interment space in which the decedent
28 26 had the right of interment at the time of death and in which
28 27 interment space the decedent is subsequently interred. The
28 28 directions may be modified or revoked only by a subsequent
28 29 writing signed and acknowledged by the person. A person other
28 30 than a decedent who is entitled to control the interment,
28 31 relocation, or disinterment of a decedent's remains under this
28 32 section shall faithfully carry out the directions of the
28 33 decedent to the extent that the decedent's estate or the
28 34 person controlling the interment, relocation, or disinterment
28 35 is financially able to do so.

29 1 6. If the decedent's directions for the interment of the
29 2 decedent's remains are in a will, the directions shall be
29 3 carried out immediately without the necessity of probate. If
29 4 a will is not probated or is declared invalid for testamentary
29 5 purposes, the directions for the interment of the decedent's
29 6 remains are valid to the extent that they have been acted upon
29 7 in good faith.

29 8 7. A cemetery shall not be liable for carrying out the
29 9 written directions of a decedent or the directions of any
29 10 person entitled to control the interment, relocation, or
29 11 disinterment of the decedent's remains.

29 12 8. If the agreement of a majority of the persons
29 13 designated in subsection 1, paragraph "c", "d", or "e", is
29 14 required and cannot be obtained concerning their right to
29 15 control the interment, relocation, or disinterment of a
29 16 decedent's remains, the dispute may be resolved by a court of
29 17 competent jurisdiction. A cemetery shall not be liable for
29 18 refusing to accept the decedent's remains, relocate or
29 19 disinter, inter or otherwise dispose of the decedent's
29 20 remains, until the cemetery receives a court order or other
29 21 suitable confirmation that the dispute has been resolved or
29 22 settled.

29 23 9. a. If good cause exists to relocate or disinter
29 24 remains interred in a cemetery, the remains may be removed
29 25 from the cemetery pursuant to a disinterment permit as
29 26 required under section 144.34, with the written consent of the
29 27 cemetery, the current interment rights owner and the person
29 28 entitled by this section to control the interment, relocation,
29 29 or disinterment of the decedent's remains.

29 30 b. If the consent required by this subsection cannot be
29 31 obtained, the remains may be relocated by permission of the
29 32 district court of the county in which the cemetery is located.
29 33 Before the date of application to the court for permission to
29 34 relocate remains under this subsection, notice must be given
29 35 to the cemetery in which the remains are interred, each person
30 1 whose consent is required for relocation of the remains under
30 2 subsection 1, and any other person that the court requires to
30 3 be served.

30 4 c. For the purposes of this subsection, personal notice
30 5 must be given not later than the eleventh day before the date
30 6 of application to the court for permission to relocate or
30 7 disinter the remains, or notice by certified mail or
30 8 restricted certified mail must be given not later than the

30 9 sixteenth day before the date of application.
30 10 d. This subsection does not apply to the removal of
30 11 remains from one interment space to another interment space in
30 12 the same cemetery to correct an error, or relocation of the
30 13 remains by the cemetery from an interment space for which the
30 14 purchase price is past due and unpaid, to another suitable
30 15 interment space.
30 16 10. A person who removes remains from a cemetery shall
30 17 keep a record of the removal, and provide a copy to the
30 18 cemetery, that includes all of the following:
30 19 a. The date the remains are removed.
30 20 b. The name of the decedent and age at death if those
30 21 facts can be conveniently obtained.
30 22 c. The place to which the remains are removed.
30 23 d. The name of the cemetery and the location of the
30 24 interment space from which the remains are removed.
30 25 11. A cemetery may disinter and relocate remains interred
30 26 in the cemetery for the purpose of correcting an error made by
30 27 the cemetery after obtaining a disinterment permit as required
30 28 by section 144.34. The cemetery shall provide written notice
30 29 describing the error to the commissioner and to the person who
30 30 has the right to control the interment, relocation, or
30 31 disinterment of the remains erroneously interred, by
30 32 restricted certified mail at the person's last known address
30 33 and sixty days prior to the disinterment. The notice shall
30 34 include the location where the disinterment will occur and the
30 35 location of the new interment space. A cemetery is not
31 1 civilly or criminally liable for an erroneously made interment
31 2 that is corrected in compliance with this subsection unless
31 3 the error was the result of gross negligence or intentional
31 4 misconduct.
31 5 12. Relocations and disinterments of human remains shall
31 6 be done in compliance with sections 144.32 and 144.34.
31 7 Sec. 32. NEW SECTION. 523I.310 SALE OF INTERMENT RIGHTS.
31 8 1. For sales or transfers of interment rights made on or
31 9 after July 1, 2005, a cemetery shall issue a certificate of
31 10 interment rights or other instrument evidencing the conveyance
31 11 of exclusive rights of interment upon payment in full of the
31 12 purchase price.
31 13 2. The interment rights in an interment space that is
31 14 conveyed by a certificate of ownership or other instrument
31 15 shall not be divided without the consent of the cemetery.
31 16 3. A conveyance of exclusive rights of interment shall be
31 17 filed and recorded in the cemetery office. Any transfer of
31 18 the ownership of interment rights shall be filed and recorded
31 19 in the cemetery office. The cemetery may charge a reasonable
31 20 recording fee to record the transfer of interment rights.
31 21 Sec. 33. NEW SECTION. 523I.311 RECORDS OF INTERMENT
31 22 RIGHTS AND INTERMENT.
31 23 1. For sales or transfers of interment rights made on or
31 24 after July 1, 2005, a cemetery shall keep complete records
31 25 identifying the owners of all interment rights sold by the
31 26 cemetery and historical information regarding any transfers of
31 27 ownership. The records shall include all of the following:
31 28 a. The name and last known address of each owner or
31 29 previous owner of interment rights.
31 30 b. The date of each purchase or transfer of interment
31 31 rights.
31 32 c. A unique numeric or alphanumeric identifier that
31 33 identifies the location of each interment space sold by the
31 34 cemetery.
31 35 2. For interments made on or after July 1, 2005, a
32 1 cemetery shall keep a record of each interment in a cemetery.
32 2 The records shall include all of the following:
32 3 a. The date the remains are interred.
32 4 b. The name, date of birth, and date of death of the
32 5 decedent interred, if those facts can be conveniently
32 6 obtained.
32 7 c. A unique numeric or alphanumeric identifier that
32 8 identifies the location of the interment space where the
32 9 remains are interred.
32 10 Sec. 34. NEW SECTION. 523I.312 DISCLOSURE REQUIREMENTS
32 11 == INTERMENT AGREEMENTS.
32 12 1. Each nonperpetual care cemetery shall have printed or
32 13 stamped at the head of all of its contracts, deeds,
32 14 statements, letterheads, and advertising material, the legend:
32 15 "This is a nonperpetual care cemetery", and shall not sell any
32 16 lot or interment space in the cemetery unless the purchaser of
32 17 the interment space is informed that the cemetery is a
32 18 nonperpetual care cemetery.
32 19 2. An agreement for interment rights under this chapter

32 20 shall be written in clear, understandable language and do all
32 21 of the following:

- 32 22 a. Identify the seller and purchaser.
- 32 23 b. Identify the salesperson.
- 32 24 c. Specify the interment rights to be provided and the
32 25 cost of each item.
- 32 26 d. State clearly the conditions on which substitution will
32 27 be allowed.
- 32 28 e. Set forth the total purchase price and the terms under
32 29 which it is to be paid.
- 32 30 f. State clearly whether the agreement is revocable or
32 31 irrevocable, and if revocable, which parties have the
32 32 authority to revoke the agreement.
- 32 33 g. State the amount or percentage of money to be placed in
32 34 the cemetery's care or maintenance fund.
- 32 35 h. If the cemetery has a care fund, set forth an
33 1 explanation that the care fund is an irrevocable trust, that
33 2 deposits cannot be withdrawn even in the event of
33 3 cancellation, and that the trust's income shall be used by the
33 4 cemetery for its care.
- 33 5 i. Set forth an explanation of any fees or expenses that
33 6 may be charged.
- 33 7 j. Set forth an explanation of whether amounts for
33 8 perpetual care will be deposited in trust upon payment in full
33 9 or on an allocable basis as payments are made.
- 33 10 k. Set forth an explanation of whether initial payments on
33 11 agreements for multiple items of funeral and cemetery
33 12 merchandise or services, or both, will be allocated first to
33 13 the purchase of an interment space. If such an allocation is
33 14 to be made, the agreement shall provide for the immediate
33 15 transfer of such interment rights upon payment in full and
33 16 prominently state that any applicable trust deposits under
33 17 chapter 523A will not be made until the cemetery has received
33 18 payment in full for the interment rights. The transfer of an
33 19 undeveloped interment space may be deferred until the
33 20 interment space is ready for interment.
- 33 21 l. If the transfer of an undeveloped interment space will
33 22 be deferred until the interment space is ready for interment
33 23 as permitted in paragraph "k", the agreement shall provide for
33 24 some form of written acknowledgement upon payment in full,
33 25 specify a reasonable time period for development of the
33 26 interment space, describe what happens in the event of a death
33 27 prior to development of the interment space, and provide for
33 28 the immediate transfer of the interment rights when
33 29 development of the interment space is complete.
- 33 30 m. Specify the purchaser's right to cancel and the damages
33 31 payable for cancellation, if any.
- 33 32 n. State the name and address of the commissioner.

33 33 Sec. 35. NEW SECTION. 523I.313 NEW CEMETERIES AND
33 34 GARDENS AND CEMETERY REGISTRY.

- 33 35 1. A person that dedicates property for a new cemetery on
34 1 or after July 1, 2005, and a cemetery that dedicates an
34 2 additional garden on or after July 1, 2005, shall:
 - 34 3 a. In the case of land, survey and subdivide the property
34 4 into gardens with descriptive names or numbers and make a map
34 5 or plat of the cemetery or garden.
 - 34 6 b. In the case of a mausoleum or a columbarium, make a map
34 7 or plat of the property delineating sections or other
34 8 divisions with descriptive names and numbers.
 - 34 9 c. File the map or plat with the commissioner, including a
34 10 written certificate or declaration of dedication of the
34 11 property delineated by the map or plat, dedicating the
34 12 property for cemetery purposes.
- 34 13 2. A map or plat and a certificate or declaration of
34 14 dedication that is filed pursuant to this section dedicates
34 15 the property for cemetery purposes and constitutes
34 16 constructive notice of that dedication.
- 34 17 3. The commissioner shall maintain a registry of perpetual
34 18 care and nonperpetual care cemeteries, to the extent that
34 19 information is available. A cemetery selling interment rights
34 20 on or after July 1, 2005, shall file a written notice with the
34 21 commissioner that includes the legal description of the
34 22 property with boundary lines of the land, the name of the
34 23 cemetery, the status of the cemetery as either perpetual care
34 24 or nonperpetual care, the status of the cemetery as either
34 25 religious or nonreligious, and the cemetery's ownership in a
34 26 form approved by the commissioner. A cemetery shall notify
34 27 the commissioner of any changes in this information within
34 28 sixty days of the change.

34 29 Sec. 36. NEW SECTION. 523I.314 NEW CONSTRUCTION.

- 34 30 1. A person shall not offer to sell interment rights in a

34 31 mausoleum or columbarium that will be built or completed in
34 32 the future unless the person has notified the commissioner of
34 33 the offer to sell on a form prescribed by the commissioner.
34 34 2. The notice of an offer to sell interment rights in such
34 35 a mausoleum or columbarium shall include the following
35 1 information:
35 2 a. A description of the new facility or the proposed
35 3 expansion, including a description of the interment rights to
35 4 be offered to prospective purchasers.
35 5 b. A statement of the financial resources available for
35 6 the project.
35 7 c. A copy of the proposed interment rights agreement to be
35 8 used, which shall include the following:
35 9 (1) That purchase payments will be held in trust in
35 10 accordance with the requirements of chapter 523A until
35 11 construction of the mausoleum or columbarium is complete.
35 12 (2) That the purchaser may request a refund of the
35 13 purchase amount, if construction does not begin within five
35 14 years of the purchaser's first payment.
35 15 (3) That the new facility will operate as a perpetual care
35 16 cemetery in compliance with this chapter, even if the facility
35 17 is located at a nonperpetual care cemetery.
35 18 (4) That the purchaser will receive an ownership
35 19 certificate upon payment in full or, if later, when
35 20 construction is complete.
35 21 3. Unless financing has been secured that is adequate in
35 22 amount and terms to complete the facility proposed, new
35 23 construction of a mausoleum or columbarium shall not begin
35 24 until the notice required by this section has been approved by
35 25 the commissioner.

35 26 Sec. 37. NEW SECTION. 523I.315 UNPAID CARE ASSESSMENTS
35 27 AND UNOCCUPIED INTERMENT SPACES.
35 28 1. FORECLOSURE == UNPAID ASSESSMENTS. Unpaid care
35 29 assessments for an unoccupied interment space not under
35 30 perpetual care shall create a lien by the cemetery against the
35 31 applicable interment space. The cemetery may, following
35 32 notice, foreclose on the interment space if the amount of the
35 33 lien exceeds the amount paid for the interment space. If the
35 34 lien is not paid within one year from the date that notice of
35 35 foreclosure is served on the owner of record or the owner of
36 1 record's heirs, the ownership in or right to the unoccupied
36 2 interment space shall revert to the cemetery that owns the
36 3 cemetery in which the unoccupied interment space is located.
36 4 2. ABANDONMENT == QUIET TITLE ACTION. A cemetery may file
36 5 an action to quiet title to determine whether an interment
36 6 space has been abandoned if the interment space is unoccupied
36 7 and has not been occupied in the preceding seventy-five years.
36 8 An action to quiet title shall commence when the cemetery
36 9 serves notice on the owner of record or the owner of record's
36 10 heirs declaring that the interment space is considered to be
36 11 abandoned. If the owner of record or the owner of record's
36 12 heirs do not respond within three years from the date that
36 13 notice is served, the abandonment is considered to be
36 14 complete. The ownership in or right to an abandoned interment
36 15 space shall revert to the cemetery in which the abandoned
36 16 interment space is located and the cemetery may sell and
36 17 convey title to the interment space.
36 18 3. SERVICE OF NOTICE. Notice under this section shall be
36 19 served personally on the owner of record or the owner of
36 20 record's heirs, or may be served by mailing notice by
36 21 certified mail to the owner of record or to the owner of
36 22 record's heirs at the last known address. If the address of
36 23 the owner of record or the owner of record's heirs cannot be
36 24 ascertained, notice of abandonment shall be given by one
36 25 publication of the notice in the official newspaper of the
36 26 county in which the cemetery is located.

36 27 Sec. 38. NEW SECTION. 523I.316 PROTECTION OF CEMETERIES
36 28 AND BURIAL SITES.
36 29 1. EXISTENCE OF CEMETERY OR BURIAL SITE == NOTIFICATION.
36 30 If a governmental subdivision is notified of the existence of
36 31 a cemetery, or a marked burial site that is not located in a
36 32 dedicated cemetery, within its jurisdiction and the cemetery
36 33 or burial site is not otherwise provided for under this
36 34 chapter, the governmental subdivision shall, as soon as is
36 35 practicable, notify the owner of the land upon which the
37 1 cemetery or burial site is located of the cemetery's or burial
37 2 site's existence and location. The notification shall include
37 3 an explanation of the provisions of this section. If there is
37 4 a basis to believe that interment may have occurred more than
37 5 one hundred fifty years earlier, the governmental subdivision
37 6 shall also notify the state archaeologist.

37 7 2. DISTURBANCE OF INTERMENT SPACES == PENALTY. A person
37 8 who knowingly and without authorization damages, defaces,
37 9 destroys, or otherwise disturbs an interment space commits
37 10 criminal mischief in the third degree. Criminal mischief in
37 11 the third degree is an aggravated misdemeanor.
37 12 3. DUTY TO PRESERVE AND PROTECT. A governmental
37 13 subdivision having a cemetery, or a burial site that is not
37 14 located within a dedicated cemetery, within its jurisdiction,
37 15 for which preservation is not otherwise provided, shall
37 16 preserve and protect the cemetery or burial site as necessary
37 17 to restore or maintain its physical integrity as a cemetery or
37 18 burial site. The governmental subdivision may enter into an
37 19 agreement to delegate the responsibility for the preservation
37 20 and protection of the cemetery or burial site to a private
37 21 organization interested in historical preservation.
37 22 4. CONFISCATION AND RETURN OF MEMORIALS. A law
37 23 enforcement officer having reason to believe that a memorial
37 24 or memorialization is in the possession of a person without
37 25 authorization or right to possess the memorial or
37 26 memorialization may take possession of the memorial or
37 27 memorialization from that person and turn it over to the
37 28 officer's law enforcement agency. If a law enforcement agency
37 29 determines that a memorial or memorialization the agency has
37 30 taken possession of rightfully belongs on an interment space,
37 31 the agency shall return the memorial or memorialization to the
37 32 interment space, or make arrangements with the person having
37 33 jurisdiction over the interment space for its return.
37 34 5. BURIAL SITES LOCATED ON PRIVATE PROPERTY.
37 35 a. If a person notifies a governmental subdivision that a
38 1 burial site of the person's relative is located on property
38 2 owned by another person within the jurisdiction of the
38 3 governmental subdivision, the governmental subdivision shall
38 4 notify the property owner of the location of the burial site
38 5 and that the property owner is required to permit the person
38 6 reasonable ingress and egress for the purposes of visiting the
38 7 burial site of the person's relative.
38 8 b. Pursuant to section 558.69, each declaration of value
38 9 submitted to a county recorder pursuant to chapter 428A shall
38 10 be accompanied by a statement concerning whether or not any
38 11 known private burial sites are located on the property.
38 12 6. DISCOVERY OF HUMAN REMAINS. Any person discovering
38 13 human remains shall notify the county or state medical
38 14 examiner or a city, county, or state law enforcement agency as
38 15 soon as is reasonably possible unless the person knows or has
38 16 good reason to believe that such notice has already been given
38 17 or the discovery occurs in a cemetery. If there is reason to
38 18 believe that interment may have occurred more than one hundred
38 19 fifty years earlier, the governmental subdivision notified
38 20 shall also notify the state archaeologist. A person who does
38 21 not provide notice required pursuant to this subsection
38 22 commits a serious misdemeanor.

38 23 SUBCHAPTER 4

38 24 COUNTY CEMETERY COMMISSIONS AND NEGLECTED CEMETERIES

38 25 Sec. 39. NEW SECTION. 523I.401 NEGLECTED CEMETERIES.

38 26 The commissioner shall create a form that interested
38 27 persons may use to report neglected cemeteries to the
38 28 commissioner. The commissioner shall catalog and review the
38 29 neglected cemetery reports received on or before December 31,
38 30 2007, conduct site visits as warranted to determine the nature
38 31 or extent of any neglect, and publish a report of findings on
38 32 or before December 31, 2008.

38 33 Sec. 40. NEW SECTION. 523I.402 REMOVAL OF REMAINS.

38 34 1. Upon a showing of good cause, a county cemetery
38 35 commission may file suit in the district court in that county
39 1 to have remains interred in a cemetery owned and operated by
39 2 the commission removed to another cemetery. All persons in
39 3 interest, known or unknown, other than the plaintiffs, shall
39 4 be made defendants to the suit. If any parties are unknown,
39 5 notice may be given by publication. After hearing and a
39 6 showing of good cause for the removal, the court may order the
39 7 removal of the remains and the remains shall be properly
39 8 interred in another cemetery, at the expense of the county.
39 9 The removal and reinterment of the remains shall be done
39 10 pursuant to a disinterment permit issued under section 144.34
39 11 with due care and decency. In deciding whether to order the
39 12 removal of interred remains, a court shall consider present or
39 13 future access to the cemetery, the historical significance of
39 14 the cemetery, and the wishes of the parties concerned if they
39 15 are brought to the court's attention, including the desire of
39 16 any beneficiaries to reserve their rights to waive a
39 17 reservation of rights in favor of removal, and shall exercise

39 18 the court's sound discretion in granting or refusing the
39 19 removal of interred remains.
39 20 2. Any heir at law or descendant of a deceased person
39 21 interred in a neglected cemetery may file suit in the district
39 22 court in the county where the cemetery is located, to have the
39 23 deceased person's remains interred in the cemetery removed to
39 24 another cemetery. The owner of the land, any beneficiaries of
39 25 any reservation of rights, and any other persons in interest,
39 26 known or unknown, other than the plaintiffs shall be made
39 27 defendants. If any parties are unknown, notice may be given
39 28 by publication. After hearing and upon a showing of good
39 29 cause, the court may order removal and the proper interment of
39 30 the remains in another cemetery, at the expense of the
39 31 petitioner. The removal and reinterment shall be done with
39 32 due care and decency.

39 33 SUBCHAPTER 5

39 34 GOVERNMENTAL SUBDIVISIONS

39 35 Sec. 41. NEW SECTION. 523I.501 CEMETERY AUTHORIZED.

40 1 The governing body of a governmental subdivision may
40 2 purchase, establish, operate, enclose, improve, or regulate a
40 3 cemetery. A cemetery owned or operated by a governmental
40 4 subdivision may sell interment rights subject to the
40 5 provisions of this chapter.

40 6 Sec. 42. NEW SECTION. 523I.502 TRUST FOR CEMETERY.

40 7 1. A governmental subdivision that owns or operates a
40 8 cemetery or has control of cemetery property may act as a
40 9 permanent trustee for the perpetual maintenance of interment
40 10 spaces in the cemetery.

40 11 2. To act as a trustee, a majority of the governmental
40 12 subdivision's governing body must adopt an ordinance or
40 13 resolution stating the governmental subdivision's willingness
40 14 and intention to act as a trustee for the perpetual
40 15 maintenance of cemetery property. When the ordinance or
40 16 resolution is adopted and the trust is accepted, the trust is
40 17 perpetual.

40 18 Sec. 43. NEW SECTION. 523I.503 AUTHORITY TO RECEIVE
40 19 GIFTS AND DEPOSITS FOR CARE == CERTIFICATES.

40 20 1. A governmental subdivision that is a trustee for the
40 21 perpetual maintenance of a cemetery may adopt reasonable rules
40 22 governing the receipt of a gift or grant from any source.

40 23 2. A governmental subdivision that is a trustee for a
40 24 person shall accept the amount the governmental subdivision
40 25 requires for permanent maintenance of an interment space on
40 26 behalf of that person or a decedent.

40 27 3. A governmental subdivision's acceptance of a deposit
40 28 for permanent maintenance of an interment space constitutes a
40 29 perpetual trust for the designated interment space.

40 30 4. Upon acceptance of a deposit, a governmental
40 31 subdivision's secretary, clerk, or mayor shall issue a
40 32 certificate in the name of the governmental subdivision to the
40 33 trustee or depositor. The certificate shall state all of the
40 34 following:

40 35 a. The depositor's name.

41 1 b. The amount and purpose of the deposit.

41 2 c. The location, with as much specificity as possible, of
41 3 the interment space to be maintained.

41 4 d. Other information required by the governmental
41 5 subdivision.

41 6 5. An individual, association, foundation, or corporation
41 7 that is interested in the maintenance of a neglected cemetery
41 8 in a governmental subdivision's possession and control may
41 9 donate funds to the cemetery's perpetual trust fund to
41 10 beautify and maintain the entire cemetery or burial grounds
41 11 generally.

41 12 Sec. 44. NEW SECTION. 523I.504 APPOINTMENT OF SUCCESSOR
41 13 TRUSTEE.

41 14 A district judge of a county in which a cemetery is located
41 15 shall appoint a suitable successor or trustee to faithfully
41 16 execute a trust in accordance with this subchapter if a
41 17 governmental subdivision renounces a trust assumed under this
41 18 subchapter, fails to act as its trustee, a vacancy occurs, or
41 19 the appointment of a successor or trustee is otherwise
41 20 necessary.

41 21 Sec. 45. NEW SECTION. 523I.505 COUNTY AUDITOR AS
41 22 TRUSTEE.

41 23 1. In the absence of a trustee for care funds, unless
41 24 otherwise provided by law, the care funds shall be placed in
41 25 the hands of the county auditor, who shall provide a receipt
41 26 for, loan, and make annual reports of the care funds.

41 27 2. The county auditor shall not be required to post a
41 28 bond.

41 29 3. The county auditor shall serve without compensation,
41 30 but may, out of the income received, pay all proper items of
41 31 expense incurred in the performance of the auditor's duties as
41 32 trustee, if any.

41 33 4. The county auditor shall make a full report of the
41 34 trustee's actions and trust funds annually in January. The
41 35 net proceeds for care funds received by the county auditor as
42 1 trustee shall be apportioned and credited to each of any
42 2 separate care funds assigned to the auditor.

42 3 5. The county auditor shall turn over the accrued income
42 4 from each care fund annually to the person having control of
42 5 the cemetery.

42 6 Sec. 46. NEW SECTION. 523I.506 COMMINGLING OF CARE FUNDS
42 7 BY GOVERNMENTAL SUBDIVISIONS.

42 8 A governmental subdivision subject to this section may
42 9 commingle care funds for more than one cemetery for the
42 10 purposes of investment and administration and may file a
42 11 single report, if each cemetery is appropriately identified
42 12 and separate records are maintained for each cemetery.

42 13 Sec. 47. NEW SECTION. 523I.507 INVESTMENT OF CARE FUNDS
42 14 BY GOVERNMENTAL SUBDIVISIONS.

42 15 Notwithstanding section 12B.10, a perpetual care cemetery
42 16 owned by a governmental subdivision may invest and reinvest
42 17 deposits pursuant to the requirements of this chapter. The
42 18 trustee shall use the judgment and care under the
42 19 circumstances then prevailing that persons of prudence,
42 20 discretion, and intelligence exercise in the management of
42 21 their own affairs, not in regard to speculation but in regard
42 22 to the permanent disposition of their funds, considering the
42 23 probable income as well as the probable safety of their
42 24 capital. The trustee of the trust funds has a fiduciary duty
42 25 to make reasonable investment decisions and to properly
42 26 oversee and manage the funds entrusted to the trust fund.

42 27 Sec. 48. NEW SECTION. 523I.508 MANAGEMENT BY
42 28 GOVERNMENTAL SUBDIVISIONS.

42 29 1. POLITICAL SUBDIVISIONS AS TRUSTEES. Counties, cities,
42 30 irrespective of their form of government, boards of trustees
42 31 of cities to whom the management of municipal cemeteries has
42 32 been transferred by ordinance, and civil townships wholly
42 33 outside of any city, are trustees in perpetuity, and are
42 34 required to accept, receive, and expend all moneys and
42 35 property donated or left to them by bequest for perpetual
43 1 care, and that portion of interment space sales or permanent
43 2 charges made against interment spaces which has been set aside
43 3 in a perpetual care fund for which there is no other acting
43 4 trustee, shall be used in caring for the property of the donor
43 5 or lot owner who by purchase or otherwise has provided for the
43 6 perpetual care of an interment space in any cemetery, or in
43 7 accordance with the terms of the donation, bequest, or
43 8 agreement for sale and purchase of an interment space, and the
43 9 money or property thus received shall be used for no other
43 10 purpose.

43 11 2. AUTHORITY TO INVEST FUNDS == CURRENT CARE CHARGE
43 12 PAYMENTS. The board of supervisors, mayor and council, or
43 13 other elected governmental body, as the case may be, may
43 14 receive and invest all moneys and property, donated or
43 15 bequeathed, and that portion of cemetery lot sales and
43 16 permanent charges made against cemetery lots which have been
43 17 set aside in a perpetual care fund, and in so investing, shall
43 18 use the judgment and care under the circumstances then
43 19 prevailing that persons of prudence, discretion, and
43 20 intelligence exercise in the management of their own affairs
43 21 not in regard to speculation but in regard to the permanent
43 22 disposition of their funds, considering the probable income as
43 23 well as the probable safety of their capital. The trustee of
43 24 the trust funds has a fiduciary duty to make reasonable
43 25 investment decisions and to properly oversee and manage the
43 26 funds entrusted to the trust fund. The income from the
43 27 investment shall be used in caring for the property of the
43 28 donor in any cemetery, or as provided in the terms of the gift
43 29 or donations or agreement for sale and purchase of a cemetery
43 30 lot.

43 31 All current care charge payments received shall be
43 32 allocated to the perpetual care fund or to the fund paying the
43 33 costs of cemetery operations. Care charge payments received
43 34 one year or more after the date they were incurred shall be
43 35 used to fund the cost of operating the cemetery. Care charge
44 1 payments received one year or more in advance of their due
44 2 date shall be deposited in the perpetual care fund. Interest
44 3 from the perpetual care fund shall be used for the maintenance
44 4 of both occupied and unoccupied lots or spaces. Any remaining

44 5 interest may be used for costs of access roads and paths,
44 6 fencing, and general maintenance of the cemetery. Lots under
44 7 perpetual care shall be maintained in accordance with the
44 8 cemetery covenants of sale.

44 9 3. RESOLUTION OF ACCEPTANCE == INTEREST. Before any part
44 10 of the principal may be invested or used, the county, city,
44 11 board of trustees of a city to whom the management of a
44 12 municipal cemetery has been transferred by ordinance, or civil
44 13 township shall, by resolution, accept the moneys described in
44 14 subsection 1 and, by resolution, shall provide for the payment
44 15 of interest annually to the appropriate fund, or to the
44 16 cemetery, or the person in charge of the cemetery, to be used
44 17 in caring for or maintaining the individual property of the
44 18 donor in the cemetery, or interment spaces which have been
44 19 sold if provision was made for perpetual care, all in
44 20 accordance with the terms of the donation or bequest, or the
44 21 terms of the sale or purchase of an interment space.

44 22 If there is no person in charge of the cemetery, the income
44 23 from the fund shall be expended under the direction of the
44 24 board of supervisors, city council, board of trustees, or
44 25 civil township trustees, as the case may be, in accordance
44 26 with the terms of the donation or bequest, or the terms of the
44 27 sale or purchase of an interment space.

44 28 4. DELEGATES TO CONVENTIONS. A township having one or
44 29 more cemeteries under its control may designate, not to exceed
44 30 two, officials from each cemetery as delegates to attend
44 31 meetings of cemetery officials, and certain expenses,
44 32 including association dues, not to exceed twenty-five dollars,
44 33 of the delegates may be paid out of the cemetery fund of the
44 34 township.

44 35 5. SUBSCRIBING TO PUBLICATIONS. The cemetery officials of
45 1 every township having a cemetery under its control may
45 2 subscribe to one or more publications devoted exclusively to
45 3 cemetery management, and the subscriptions may be paid out of
45 4 the cemetery fund of the township.

45 5 SUBCHAPTER 6

45 6 GENERAL PROVISIONS

45 7 Sec. 49. NEW SECTION. 523I.601 SETTLEMENT OF ESTATES ==
45 8 MAINTENANCE FUND.

45 9 The court in which the estate of a deceased person is
45 10 administered, before final distribution, may allow and set
45 11 apart from the estate a sum sufficient to provide an income
45 12 adequate to pay for the perpetual care and upkeep of the
45 13 interment spaces upon which the body of the deceased is
45 14 buried, except where perpetual care has otherwise been
45 15 provided for. The sum so allowed and set apart shall be paid
45 16 to a trustee as provided by this chapter.

45 17 Sec. 50. NEW SECTION. 523I.602 MANAGEMENT BY TRUSTEE.

45 18 1. TRUSTEE APPOINTED == TRUST FUNDS. The owners of, or
45 19 any party interested in, a cemetery may, by petition presented
45 20 to the district court of the county where the cemetery is
45 21 situated, have a trustee appointed with authority to receive
45 22 any and all moneys or property that may be donated for and on
45 23 account of the cemetery and to invest, manage, and control the
45 24 moneys or property under the direction of the court. However,
45 25 the trustee shall not be authorized to receive any gift,
45 26 except with the understanding that the principal sum is to be
45 27 a permanent fund, and only the net proceeds therefrom shall be
45 28 used in carrying out the purpose of the trust created, and all
45 29 such funds shall be exempt from taxation.

45 30 2. REQUISITES OF PETITION. The petition shall state the
45 31 amount proposed to be placed in such trust fund, the manner of
45 32 investment thereof, and the provisions made for the
45 33 disposition of any surplus income not required for the care
45 34 and upkeep of the property described in such petition.

45 35 3. APPROVAL OF COURT == SURPLUS FUND. Such provisions
46 1 shall be subject to the approval of the court and when so
46 2 approved the trust fund and the trustee thereof shall, at all
46 3 times, be subject to the orders and control of the court and
46 4 such surplus arising from the trust fund shall not be used
46 5 except for charitable, eleemosynary, or public purposes under
46 6 the direction of the court.

46 7 4. RECEIPT == CEMETERY RECORD. Every such trustee shall
46 8 execute and deliver to the donor a receipt showing the amount
46 9 of money or other property received, and the use to be made of
46 10 the net proceeds from the same, duly attested by the clerk of
46 11 the court granting letters of trusteeship, and a copy thereof,
46 12 signed by the trustee and so attested, shall be filed with and
46 13 recorded by the clerk in a book to be known as the cemetery
46 14 record, in which shall be recorded all reports and other
46 15 papers, including orders made by the court relative to

46 16 cemetery matters.

46 17 5. INVESTMENTS. Any such trustee may receive and invest
46 18 all moneys and property, so donated or bequeathed, and that
46 19 portion of cemetery lot sales and permanent charges made
46 20 against interment spaces which has been set aside in a
46 21 perpetual care fund, in such authorized investments and in the
46 22 manner prescribed in section 636.23.

46 23 6. BOND == APPROVAL == OATH. Every such trustee before
46 24 entering upon the discharge of the trustee's duties or at any
46 25 time thereafter when required by the court shall give a bond
46 26 in an amount as may be required by the court, approved by the
46 27 clerk, and conditioned for the faithful discharge of the
46 28 trustee's duties, and take and subscribe an oath the same in
46 29 substance as the condition of the bond, which bond and oath
46 30 must be filed with the clerk.

46 31 7. CLERK == DUTY OF. At the time of filing each bond and
46 32 oath the clerk shall at once advise the court as to the amount
46 33 of the principal fund in the hands of such trustee, the amount
46 34 of the bond filed, and whether it is good and sufficient for
46 35 the amount given.

47 1 8. COMPENSATION == COSTS. Such trustee shall serve
47 2 without compensation, but may, out of the income received, pay
47 3 all proper items of expense incurred in the performance of the
47 4 trustee's duties, including cost of the bond, if any.

47 5 9. ANNUAL REPORT. Such trustee shall make a full report
47 6 of the trustee's doings in the month of January following
47 7 appointment and in January of each successive year. In each
47 8 report the trustee shall apportion the net proceeds received
47 9 from the sum total of the permanent funds assigned to the
47 10 trustee in trust.

47 11 10. REMOVAL == VACANCY FILLED. Any such trustee may be
47 12 removed by the court at any time for cause, and in the event
47 13 of removal or death, the court shall appoint a new trustee and
47 14 require the new trustee's predecessor or the predecessor's
47 15 personal representative to make a full accounting.

47 16 Sec. 51. NEW SECTION. 523I.603 OWNERS OF INTERMENT
47 17 RIGHTS.

47 18 1. An interment space in which exclusive rights of
47 19 interment are conveyed is presumed to be the separate property
47 20 of the person named as grantee in the certificate of interment
47 21 rights or other instrument of conveyance.

47 22 2. Two or more owners of interment rights may designate a
47 23 person to represent the interment space and file notice of the
47 24 designation of a representative with the cemetery. If notice
47 25 is not filed, the cemetery may inter or permit an interment in
47 26 the interment space at the request or direction of a
47 27 registered co-owner of the interment space.

47 28 Sec. 52. NEW SECTION. 523I.604 LIEN AGAINST CEMETERY
47 29 PROPERTY.

47 30 1. A cemetery, by contract, may incur indebtedness as
47 31 necessary to conduct its business and may secure the
47 32 indebtedness by mortgage, deed of trust, or other lien against
47 33 its property.

47 34 2. A mortgage, deed of trust, or other lien placed on
47 35 dedicated cemetery property, or on cemetery property that is
48 1 later dedicated with the consent of the holder of the lien,
48 2 does not affect the dedication and is subject to the
48 3 dedication. A sale on foreclosure of the lien is subject to
48 4 the dedication of the property for cemetery purposes.

48 5 Sec. 53. NEW SECTION. 523I.605 PRIVATE CARE OF GRAVES.
48 6 This subchapter does not affect the right of a person who
48 7 has an interest in an interment space, or who is a relative of
48 8 a decedent interred in a cemetery, to beautify or maintain an
48 9 interment space individually or at the person's own expense in
48 10 accordance with reasonable rules established by the cemetery.

48 11 SUBCHAPTER 7
48 12 LAWN CRYPTS

48 13 Sec. 54. NEW SECTION. 523I.701 REQUIREMENTS FOR LAWN
48 14 CRYPTS.

48 15 A lawn crypt shall not be installed unless all of the
48 16 following apply:

48 17 1. The lawn crypt is constructed of concrete and
48 18 reinforced steel or other comparable durable material.

48 19 2. The lawn crypt is installed on not less than six inches
48 20 of rock, gravel, or other drainage material.

48 21 3. The lawn crypt provides a method to drain water out of
48 22 the lawn crypt.

48 23 4. The lawn crypt is capable of withstanding the weight of
48 24 the soil and sod above the top surface and the weight of
48 25 machinery and equipment normally used in the maintenance of
48 26 the cemetery.

48 27 5. Except as provided by section 523I.702, the lawn crypt
48 28 is installed in multiple units of ten or more.
48 29 6. The lawn crypt shall be installed in compliance with
48 30 any applicable law or rule adopted by the department of public
48 31 health.
48 32 Sec. 55. NEW SECTION. 523I.702 REQUEST TO INSTALL LAWN
48 33 CRYPTS IN FEWER THAN TEN UNITS.
48 34 1. A lawn crypt may be installed in fewer than ten units
48 35 if it is installed in an interment space pursuant to a written
49 1 request to the commissioner signed by the owner or owners of
49 2 the interment space.
49 3 2. The written request shall be filed on a form prescribed
49 4 by the commissioner and shall contain substantially all of the
49 5 following information:
49 6 a. The owner's name and address.
49 7 b. The name of the cemetery and the owner of the cemetery.
49 8 c. The number of lawn crypt units to be installed.
49 9 d. A description of the interment spaces.
49 10 e. A statement that the lawn crypt meets the requirements
49 11 of section 523I.701, including all of the following:
49 12 (1) A statement that the lawn crypt will be constructed of
49 13 concrete and reinforced steel or other comparable durable
49 14 materials.
49 15 (2) A statement that the lawn crypt will be installed on
49 16 not less than six inches of rock, gravel, or other drainage
49 17 material.
49 18 (3) A statement that the lawn crypt will provide a method
49 19 to drain water out of the lawn crypt.
49 20 (4) A statement that the outside top surface of the lawn
49 21 crypt at the time of installation will be capable of
49 22 withstanding the weight of the soil and sod above the top
49 23 surface and the weight of machinery and equipment normally
49 24 used in the maintenance of the cemetery.
49 25 f. A statement that the space in which the lawn crypt is
49 26 to be installed is located in a garden.
49 27 g. The date on which a representative of the cemetery
49 28 signed the form.

49 29 SUBCHAPTER 8

49 30 PERPETUAL CARE CEMETERIES == REQUIREMENTS
49 31 Sec. 56. NEW SECTION. 523I.801 APPLICABILITY AND
49 32 CONVERSION BY NONPERPETUAL CARE CEMETERIES.

49 33 1. All cemeteries are designated as either "perpetual care
49 34 cemeteries" or "nonperpetual care cemeteries" for the purposes
49 35 of this chapter. A cemetery that represents that it is
50 1 offering perpetual care on or after July 1, 2005, is subject
50 2 to this subchapter.

50 3 2. A cemetery that operates a nonperpetual care cemetery
50 4 may elect to become a perpetual care cemetery if at all times
50 5 subsequent to the date of the election, the cemetery complies
50 6 with the other requirements of this subchapter except section
50 7 523I.805.

50 8 Sec. 57. NEW SECTION. 523I.802 ADVERTISING.

50 9 1. A cemetery shall not advertise, represent, guarantee,
50 10 promise, or contract to provide or offer perpetual care or use
50 11 terms or phrases like permanent care, permanent maintenance,
50 12 care forever, continuous care, eternal care, or everlasting
50 13 care to imply that a certain level of care and financial
50 14 security will be furnished or is guaranteed except in
50 15 compliance with the provisions of this subchapter.

50 16 2. A cemetery or person advertising or selling interment
50 17 rights shall not represent that the purchase of the interment
50 18 rights is or will be a desirable speculative investment for
50 19 resale purposes.

50 20 Sec. 58. NEW SECTION. 523I.803 PERPETUAL CARE REGISTRY.

50 21 1. A cemetery that operates a perpetual care cemetery
50 22 shall maintain a registry of individuals who have purchased
50 23 interment rights in the cemetery subject to the care fund
50 24 requirements of this subchapter.

50 25 2. The registry shall include the amount deposited in
50 26 trust for each interment rights agreement entered into on or
50 27 after July 1, 1995.

50 28 Sec. 59. NEW SECTION. 523I.804 USE OF GIFT FOR SPECIAL
50 29 CARE.

50 30 A trustee may accept and hold money or property transferred
50 31 to the trustee in trust for the purpose of applying the
50 32 principal or income of the money or property transferred for a
50 33 purpose consistent with the purpose of a perpetual care
50 34 cemetery, including the following:

50 35 1. Improvement or embellishment of any part of the
51 1 cemetery.

51 2 2. Erection, renewal, repair, or preservation of a

51 3 monument, fence, building, or other structure in the cemetery.

51 4 3. Planting or cultivation of plants in or around the
51 5 cemetery.

51 6 4. Special care of or embellishment of an interment space,
51 7 section, or building in the cemetery.

51 8 Sec. 60. NEW SECTION. 523I.805 INITIAL DEPOSIT.

51 9 1. A cemetery owned or operated by a political subdivision
51 10 of this state is not required to make a minimum initial
51 11 deposit in a care fund. Any other cemetery commencing
51 12 business in this state on or after July 1, 2005, shall not
51 13 sell interment spaces unless the cemetery has a care fund of
51 14 at least twenty-five thousand dollars in cash.

51 15 2. If an initial deposit is made by a cemetery to satisfy
51 16 subsection 1, the initial twenty-five thousand dollar deposit
51 17 may be withdrawn by the cemetery when the care fund balance
51 18 reaches one hundred thousand dollars. An affidavit shall be
51 19 filed with the commissioner providing prior notice of the
51 20 intended withdrawal of the initial deposit and attesting that
51 21 the money has not previously been withdrawn. Upon a showing
51 22 by the cemetery that the initial deposit has not previously
51 23 been withdrawn, the commissioner shall approve withdrawal of
51 24 the money and the withdrawal shall take place within one year
51 25 after the care fund balance reaches one hundred thousand
51 26 dollars.

51 27 Sec. 61. NEW SECTION. 523I.806 IRREVOCABLE TRUST.

51 28 1. A perpetual care cemetery shall establish a care fund
51 29 as an irrevocable trust to provide for the care of the
51 30 cemetery, which shall provide for the appointment of a
51 31 trustee, with perpetual succession.

51 32 2. The care fund shall be administered under the
51 33 jurisdiction of the district court of the county where the
51 34 cemetery is located. Notwithstanding chapter 633, annual
51 35 reports shall not be required unless specifically required by
52 1 the district court. Reports shall be filed with the court
52 2 when necessary to receive approval of appointments of
52 3 trustees, trust agreements and amendments, changes in fees or
52 4 expenses, and other matters within the court's jurisdiction.
52 5 A court having jurisdiction over a care fund shall have full
52 6 jurisdiction to approve the appointment of trustees, the
52 7 amount of surety bond required, if any, and investment of
52 8 funds.

52 9 Sec. 62. NEW SECTION. 523I.807 CARE FUND DEPOSITS.

52 10 1. To continue to operate as a perpetual care cemetery, a
52 11 cemetery shall set aside and deposit in the care fund an
52 12 amount equal to or greater than fifty dollars or twenty
52 13 percent of the gross selling price received by the cemetery
52 14 for each sale of interment rights, whichever is more.

52 15 2. A cemetery may require a contribution to the care fund
52 16 for perpetual care of a memorial or memorialization placed in
52 17 the cemetery. A cemetery may establish a separate care fund
52 18 for this purpose. The contributions shall be nonrefundable
52 19 and shall not be withdrawn from the trust fund once deposited.
52 20 The amount charged shall be uniformly charged on every
52 21 installation of a memorial, based on the height and width of
52 22 the memorial or the size of the ground surface area used for
52 23 the memorial. A fee for special care of a memorial may be
52 24 collected if the terms of the special care items and
52 25 arrangements are clearly specified in the interment rights
52 26 agreement. Except as otherwise provided in an interment
52 27 rights agreement, a cemetery is not liable for repair or
52 28 maintenance of memorials or vandalism. A cemetery may use
52 29 income from a care fund to repair or replace memorials or
52 30 interment spaces damaged by vandalism or acts of God.
52 31 3. Moneys shall be deposited in the care fund no later
52 32 than the fifteenth day after the close of the month when the
52 33 cemetery receives the final payment from a purchaser of
52 34 interment rights.

52 35 Sec. 63. NEW SECTION. 523I.808 AUDIT FEE.

53 1 An audit fee shall be submitted with the cemetery's annual
53 2 report in an amount equal to five dollars for each certificate
53 3 of interment rights issued during the fiscal year covered by
53 4 the report. The cemetery may charge the audit fee directly to
53 5 the purchaser of the interment rights.

53 6 Sec. 64. NEW SECTION. 523I.809 TRUST AGREEMENT
53 7 PROVISIONS.

53 8 1. A trust agreement shall provide for the appointment of
53 9 at least one trustee, with perpetual succession, in case the
53 10 cemetery is dissolved or ceases to be responsible for the
53 11 cemetery's care.

53 12 2. A cemetery and the trustee or trustees of the care fund
53 13 may, by agreement, amend the instrument that established the

53 14 fund to include any provision that is necessary to comply with
53 15 the requirements of this chapter.

53 16 3. A cemetery is responsible for the deposit of all moneys
53 17 required to be placed in a care fund.

53 18 4. The commissioner may require the amending of a trust
53 19 agreement that is not in accord with the provisions of this
53 20 chapter.

53 21 Sec. 65. NEW SECTION. 523I.810 CARE FUNDS.

53 22 1. A trustee of a care fund shall use the judgment and
53 23 care under the circumstances then prevailing that persons of
53 24 prudence, discretion, and intelligence exercise in the
53 25 management of their own affairs, not in regard to speculation
53 26 but in regard to the permanent disposition of their funds,
53 27 considering the probable income as well as the probable safety
53 28 of their capital. The trustee of a care fund has a fiduciary
53 29 duty to make reasonable investment decisions and to properly
53 30 oversee and manage the funds entrusted to the care fund.

53 31 a. A financial institution may serve as a trustee if
53 32 granted those powers under the laws of this state or of the
53 33 United States. A financial institution acting as a trustee of
53 34 a care fund under this chapter shall invest the funds in
53 35 accordance with applicable law.

54 1 b. A financial institution acting as a trustee of a care
54 2 fund under this chapter has a fiduciary duty to make
54 3 reasonable investment decisions and to properly oversee and
54 4 manage the funds entrusted to the financial institution. The
54 5 commissioner may take enforcement action against a financial
54 6 institution in its capacity as trustee for a breach of
54 7 fiduciary duty under this chapter.

54 8 c. Care fund moneys may be deposited pursuant to a master
54 9 trust agreement, if each care fund is treated as a separate
54 10 beneficiary of the trust and each care fund is separable. The
54 11 master trust shall maintain a separate accounting of principal
54 12 and income for each care fund. Moneys deposited under a
54 13 master trust agreement may be commingled by the financial
54 14 institution for investment purposes.

54 15 d. Subject to a master trust agreement, the cemetery may
54 16 appoint an independent investment advisor to advise the
54 17 financial institution about investment of the care fund.

54 18 e. Subject to an agreement between the cemetery and the
54 19 financial institution, the financial institution may receive a
54 20 reasonable fee from the care fund for services rendered as
54 21 trustee.

54 22 f. If the amount of a care fund exceeds two hundred
54 23 thousand dollars, the cemetery or any officer, director,
54 24 agent, employee, or affiliate of the cemetery shall not serve
54 25 as trustee unless the cemetery is a cemetery owned or operated
54 26 by a governmental subdivision of this state. A financial
54 27 institution holding care funds shall not do any of the
54 28 following:

54 29 (1) Be owned, under the control of, or affiliated with the
54 30 cemetery.

54 31 (2) Use any funds required to be held in trust under this
54 32 chapter to purchase an interest in a contract or agreement to
54 33 which the cemetery is a party.

54 34 (3) Otherwise invest care funds, directly or indirectly,
54 35 in the cemetery's business operations.

55 1 2. All moneys required to be deposited in the care fund
55 2 shall be deposited in the name of the trustee, as trustee,
55 3 under the terms of a trust agreement and the trustee may
55 4 invest, reinvest, exchange, retain, sell, and otherwise manage
55 5 the care fund trust for the benefit and protection of the
55 6 cemetery.

55 7 3. This section does not prohibit a cemetery from moving
55 8 care funds from one financial institution to another.

55 9 4. A care fund may receive and hold as part of the care
55 10 fund or as an incident to the care fund any property
55 11 contributed to the care fund.

55 12 5. A contribution to a care fund is considered to be for
55 13 charitable purposes if the care financed by the care fund is
55 14 for the following purposes:

55 15 a. The discharge of a duty due from the cemetery to
55 16 persons interred and to be interred in the cemetery.

55 17 b. The benefit and protection of the public by preserving
55 18 and keeping the cemetery in a dignified condition so that the
55 19 cemetery does not become a nuisance or a place of disorder,
55 20 reproach, and desolation in the community in which the
55 21 cemetery is located.

55 22 6. A contribution to a care fund is not invalid because of
55 23 the following:

55 24 a. Indefiniteness or uncertainty as to the person

55 25 designated as a beneficiary in the instrument establishing the
55 26 care fund.

55 27 b. A violation of the law against perpetuities or the law
55 28 against the suspension of the power of alienation of title to
55 29 or use of property.

55 30 7. A care fund shall pay the fund's operation costs and
55 31 any annual audit fees. The principal of a care fund is
55 32 intended to remain available perpetually as a funding source
55 33 for care of the cemetery. The principal of a care fund shall
55 34 not be reduced voluntarily and shall remain inviolable, except
55 35 as provided in this section. The trustee or trustees of a
56 1 care fund shall maintain the principal of the care fund
56 2 separate from all operating funds of the cemetery.

56 3 8. In establishing a care fund, the cemetery may adopt
56 4 plans for the care of the cemetery and installed memorials and
56 5 memorialization.

56 6 9. A cemetery may, by resolution adopted by a vote of at
56 7 least two-thirds of the members of its board at any authorized
56 8 meeting of the board, authorize the withdrawal and use of not
56 9 more than twenty percent of the principal of the care fund to
56 10 acquire additional land for cemetery purposes, to repair a
56 11 mausoleum or other building or structure intended for cemetery
56 12 purposes, or to build, improve, or repair roads and walkways
56 13 in the cemetery. The resolution shall establish a reasonable
56 14 repayment schedule, not to exceed five years, and provide for
56 15 interest in an amount comparable to the care fund's current
56 16 rate of return on its investments. However, the care fund
56 17 shall not be diminished below an amount equal to the greater
56 18 of twenty-five thousand dollars or five thousand dollars per
56 19 acre of land in the cemetery. The resolution, and either a
56 20 bond or proof of insurance to guarantee replenishment of the
56 21 care fund, shall be filed with the commissioner thirty days
56 22 prior to the withdrawal of funds.

56 23 Sec. 66. NEW SECTION. 523I.811 USE OF DISTRIBUTIONS FROM
56 24 CARE FUND.

56 25 1. Care fund distributions may be used in any manner
56 26 determined to be in the best interests of the cemetery if
56 27 authorized by a resolution, bylaw, or other action or
56 28 instrument establishing the care fund, including but not
56 29 limited to the general care of memorials, memorialization, and
56 30 any of the following:

56 31 a. Cutting and trimming lawns, shrubs, and trees at
56 32 reasonable intervals.

56 33 b. Maintaining drains, water lines, roads, buildings,
56 34 fences, and other structures.

56 35 c. Maintaining machinery, tools, and equipment.

57 1 d. Compensating maintenance employees, paying insurance
57 2 premiums, and making payments to employees' pension and
57 3 benefit plans.

57 4 e. Paying overhead expenses incidental to such purposes.

57 5 f. Paying expenses necessary to maintain ownership,
57 6 transfer, and interment records of the cemetery.

57 7 2. The commissioner may, by rule, establish terms and
57 8 conditions under which a cemetery may withdraw capital gains
57 9 from the care fund.

57 10 Sec. 67. NEW SECTION. 523I.812 SUIT BY COMMISSIONER.

57 11 1. If the person or persons in control of a cemetery do
57 12 not care for and maintain the cemetery, the district court of
57 13 the county in which the cemetery is located may do the
57 14 following:

57 15 a. By injunction compel the cemetery to expend the net
57 16 income of the care fund as required by this chapter.

57 17 b. Appoint a receiver to take charge of the care fund and
57 18 expend the net income of the care fund as required by this
57 19 chapter.

57 20 c. Grant relief on a petition for relief filed pursuant to
57 21 this section by the commissioner.

57 22 2. Inadequate care and maintenance of a cemetery includes
57 23 but is not limited to the following:

57 24 a. Failure to adequately mow grass.

57 25 b. Failure to adequately edge and trim bushes, trees, and
57 26 memorials.

57 27 c. Failure to keep walkways and sidewalks free of
57 28 obstructions.

57 29 d. Failure to adequately maintain the cemetery's equipment
57 30 and fixtures.

57 31 This subsection is not intended to prevent the
57 32 establishment of a cemetery as a nature park or preserve.

57 33 Sec. 68. NEW SECTION. 523I.813 ANNUAL REPORT BY
57 34 PERPETUAL CARE CEMETERIES.

57 35 1. A perpetual care cemetery shall file a written report

58 1 at the end of each fiscal year of the cemetery that includes
58 2 all of the following:
58 3 a. The name and address of the cemetery.
58 4 b. The name and address of the corporation that owns the
58 5 cemetery, if any.
58 6 c. A description of any common business enterprise or
58 7 parent company that owns the cemetery, if any.
58 8 d. The name and address of any owner, officer, or other
58 9 official of the cemetery, including, when relevant, the chief
58 10 executive officer and the members of the board of directors.
58 11 e. The name and address of any trustee holding trust funds
58 12 for the cemetery, including the name and location of the
58 13 applicable trust account.
58 14 f. An affidavit that the cemetery is in compliance with
58 15 this chapter.
58 16 g. Copies of all sales agreement forms used by the
58 17 cemetery.
58 18 h. The amount of the principal of the cemetery's care
58 19 funds or maintenance funds, if any, at the end of the fiscal
58 20 year.
58 21 2. The report shall be filed with the commissioner within
58 22 four months following the end of the cemetery's fiscal year in
58 23 the form required by the commissioner.
58 24 Sec. 69. NEW SECTION. 523I.814 UNIFIED ANNUAL REPORTS.
58 25 The commissioner shall permit the filing of a unified
58 26 report in the event of commonly owned or affiliated cemeteries
58 27 if each cemetery is separately identified and separate records
58 28 are maintained for each cemetery.
58 29 Sec. 70. Section 602.8102, subsection 81, Code 2005, is
58 30 amended to read as follows:
58 31 81. Carry out duties relating to cemeteries as provided in
58 32 ~~sections 566.4, 566.7, and 566.8~~ section 523I.602.
58 33 Sec. 71. Section 602.8104, subsection 2, paragraph h, Code
58 34 2005, is amended to read as follows:
58 35 h. A cemetery record as provided in section ~~566.4~~
59 1 523I.602.
59 2 Sec. 72. Section 636.23, subsection 14, Code 2005, is
59 3 amended to read as follows:
59 4 14. LIMITATION AS TO COURT=APPROVED INVESTMENTS. This
59 5 section does not prohibit investment of such funds in a
59 6 savings account or time certificate of deposit of a bank or
59 7 savings and loan association, located within the city or its
59 8 county of this state and when first approved by the court.
59 9 However, a city that is the trustee of a cemetery as provided
59 10 in section ~~566.14~~ 523I.508 may invest perpetual care funds in
59 11 a savings account or certificates of deposit at a bank or
59 12 savings and loan association, located in this state without
59 13 court approval.
59 14 Sec. 73. Section 359.41, Code 2005, is repealed.
59 15 Sec. 74. Chapters 523I, 566, and 566A, Code 2005, are
59 16 repealed.

59 17 EXPLANATION

59 18 This bill relates to cemeteries and cemetery regulation and
59 19 provides for administration and enforcement procedures related
59 20 to cemeteries, including establishing and appropriating fees,
59 21 and providing for penalties.

59 22 The bill amends Code section 523A.812 and adds new Code
59 23 section 523A.814 to require a business establishment that is
59 24 involved with cemetery and funeral merchandise and funeral
59 25 services or a combination thereof to pay an annual audit fee
59 26 of \$5 for each purchase agreement sold that is filed and
59 27 subject to a filing fee between July 1, 2005, and December 31,
59 28 2007. The insurance commissioner is required to allocate the
59 29 audit fees collected to the insurance division regulatory fund
59 30 for pay for auditors, audit expenses, investigative expenses,
59 31 mediation expenses, consumer education expenses, a toll-free
59 32 consumer complaint telephone line, and receivership expenses.
59 33 The bill repeals Code chapter 523I concerning cemeteries,
59 34 Code chapter 566 concerning cemetery management, and Code
59 35 chapter 566A concerning cemetery regulation.

60 1 The bill creates a new Code chapter 523I concerning
60 2 cemeteries, cemetery administration and enforcement
60 3 procedures, cemetery management, county cemetery commissions
60 4 and neglected cemeteries, cemeteries owned or operated by
60 5 governmental subdivisions, requirements for lawn crypts, and
60 6 requirements applying to perpetual care cemeteries.

60 7 The new Code chapter 523I is applicable to all cemeteries,
60 8 except religious cemeteries that commenced business prior to
60 9 July 1, 2005; all persons advertising or offering memorials,
60 10 memorialization, opening and closing services, scattering
60 11 services at a cemetery, interment rights, or a combination

60 12 thereof for sale; and interments made in areas not dedicated
60 13 as a cemetery, by a person other than the state archaeologist.
60 14 The bill authorizes civil lawsuits brought by the insurance
60 15 division against a cemetery that fails to use care funds to
60 16 maintain the cemetery property.
60 17 The bill defines certain acts committed in violation of
60 18 Code chapter 523I as fraudulent practices.
60 19 The bill provides for the establishment of a receivership
60 20 for a cemetery under certain circumstances.
60 21 The bill provides for the creation of a special revenue
60 22 fund in the state treasury to be known as the insurance
60 23 division's enforcement fund by allocating filing fees in an
60 24 amount not exceeding \$50,000. The moneys in the fund are
60 25 appropriated to the use of the insurance commissioner to pay
60 26 for auditors, investigative expenses, consumer education
60 27 expenses, a toll-free consumer complaint telephone line, and
60 28 receivership expenses of perpetual care cemeteries.
60 29 The bill requires cemeteries to make disclosures to a buyer
60 30 of interment rights when grave opening and closing fees are
60 31 not included in the agreement. The bill authorizes a cemetery
60 32 to accept written instructions of a decedent concerning
60 33 interment, relocation, or disinterment of remains. The bill
60 34 contains provisions for making a determination of who has the
60 35 right to control interment, relocation, or disinterment of
61 1 remains.
61 2 The bill establishes requirements for recording ownership
61 3 of interment rights at each cemetery location rather than just
61 4 with the county recorder. The bill requires cemeteries to
61 5 maintain complete interment records that identify the owners
61 6 of all interment rights sold or transferred by the cemetery on
61 7 or after July 1, 2005, and contain historical information
61 8 concerning any changes of ownership of interment rights. The
61 9 bill sets forth requirements for interment rights agreements.
61 10 The bill contains a procedure to dedicate new cemeteries or
61 11 subdivisions of cemeteries with a public filing with the
61 12 insurance division.
61 13 The bill requires a public filing with the insurance
61 14 division before the construction of new mausoleums and
61 15 columbariums. The bill sets forth procedures governing the
61 16 installation of memorials and memorialization by third
61 17 parties.
61 18 The bill increases the penalty for disturbing an interment
61 19 site from a simple misdemeanor to an aggravated misdemeanor.
61 20 A simple misdemeanor is punishable by confinement for no more
61 21 than 30 days or a fine of at least \$50 but not more than \$500
61 22 or by both. An aggravated misdemeanor is punishable by
61 23 confinement for no more than two years and a fine of at least
61 24 \$500 but not more than \$5,000.
61 25 The bill contains a procedure for the removal of remains
61 26 from a neglected cemetery. The bill provides a procedure for
61 27 reporting neglected cemeteries to the insurance division and
61 28 provides that the commissioner shall catalog and review such
61 29 reports received, on or before December 31, 2007, and publish
61 30 a report of findings on or before December 31, 2008.
61 31 The bill authorizes governmental subdivisions to commingle
61 32 care funds for the purposes of investment and administration.
61 33 The bill authorizes governmental subdivisions that operate
61 34 cemeteries to invest their maintenance and care funds in the
61 35 same manner as other cemetery corporations notwithstanding
62 1 Code section 12B.10.
62 2 The bill sets forth requirements for lawn crypts and their
62 3 installation.
62 4 The bill sets forth requirements for perpetual care
62 5 cemeteries and provides that cemeteries that represent that
62 6 they are offering perpetual care on or after July 1, 2005, are
62 7 subject to the provisions of the bill. The bill requires any
62 8 cemetery commencing business on or after July 1, 2005, other
62 9 than those owned or operated by governmental subdivisions, to
62 10 establish a care fund of at least \$25,000 in cash. The bill
62 11 allows a nonperpetual care cemetery to elect to become a
62 12 perpetual care cemetery if the cemetery complies with the
62 13 requirements applicable to a perpetual care cemetery, except
62 14 such a cemetery is not required to make an initial \$25,000
62 15 care fund deposit. The bill does not apply to religious
62 16 cemeteries that commenced business prior to July 1, 2005.
62 17 LSB 1108DP 81
62 18 av:rj/gg/14.1